Quarterly Report of the ATTORNEY GENERAL of ALABAMA

For The Period
From July 1, 1954
Through September 30, 1954

VOLUME 76

SI GARRETT, Attorney General

Attorney General:

Si Garrett

Assistant Attorneys General

Lee Edward Barton
Robert P. Bradley
Paul T. Gish, Jr.
Arthur Joe Grant
Gordon Madison
William N. McQueen
William H. Sanders
James L. Screws
Maury D. Smith
Robert Straub
Bernard F. Sykes

Assistant Attorney General Assigned to the Department of Agriculture and Industries:

George O. Miller, Jr.

Assistant Attorney General Assigned to the Department of Conservation:

A. J. Harris

Assistant Attorney General Assigned to the Department of Examiners of Public Accounts:

James T. Hardin

Assistant Attorney General Assigned to the Department of Finance:

Randolph G. Lurie

Assistant Attorney General Assigned to the Department of Public Welfare:

Mary Lee

Assistant Attorney General Assigned to the Department of Revenue:

H. Grady Tiller
Willard W. Livingston
William H. Burton, Jr.
James R. Payne

Confidential Secretary:

Mrs. Dorothy G. Johnson

QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

July 1, 1954

Through September 30, 1954

Volume No. 76

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1954, through September 30, 1954, as published in compliance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

SI GARRETT,

Attorney General.

OPINIONS

July 6, 1954

Hon. Joe L. Coleman
Director of Industrial Relations
State of Alabama
Montgomery 5, Alabama

Workmen's Compensation—Employment, Employer, and Employees.

1. The dependents of a person employed in the State of Alabama are not entitled to recover under the Alabama Workmen's Compensation Act for the employee's death arising out of and in the course of his employment if the dependents are not residents of the United States.

2. An employee injured outside the United States by an accident arising out of and in the course of his employment is entitled to recover under the Alabama Workmen's Compensation Act provided his contract of employment was made in Alabama and did not expressly provide otherwise.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of March 18, 1954, is as follows:

"I respectfully request your opinion with respect to the following questions based on the facts herein set out.

"An employer is subject to the provisions of the State Workmen's Compensation Law. It has an employee who was hired in Alabama and is stationed in Mexico City, Mexico. This person is a citizen of the United States and resided in Alabama prior to November 1945, when he moved to Mexico in connection with his employment. He has resided in Mexico continuously since 1945.

"This employee considers himself as being a permanent resident of Mexico. He owns personal property and an undivided interest in real estate in Alabama, but has no physical residence place in Alabama. His wife was born in the United States and is a citizen of the same. She considers herself as being a permanent resident of Mexico. They have one child who was born in Mexico, and, of course, resides there.

"The questions are:

"1. Under the facts set out above, in the event the employee were to be killed while performing an act arising out of and in the course of his employment, would his dependents, who are non-residents of the United States, be entitled to recover under the State Workmen's Compensation Law?

"In this connection, I call your attention to Section 298, Title 26, Code of Alabama 1940, which provides as follows:

" 'Section 298. Compensation paid only to residents of United States.—

Compensation for the death of an employee shall be paid only to dependents who at the time of the death of the injured employee were actually residents of the United States. No right of action to recover damages for the death of an employee shall exist in favor or for the benefit of any person who was not a resident of the United States at the time of the death of such employee.'

"2. If this employee were to be injured outside the United States by an accident arising out of and in the course of his employment, would he be entitled to benefits under the State Workmen's Compensation Law?

"In this connection, I respectfully call your attention to Section 259, Title 26, Code of Alabama 1940. It is therein provided that:
" 'Section 259. Recovery where contract of employment made in this state.—Where an accident occurs while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation had it happened in this state, the employee or his dependents shall be entitled to compensation under articles 1 and 2 of this chapter if the contract of employment was made in this state, unless otherwise expressly provided by said contract, and such compensation shall be in lieu of any right of action and compensation for injury or death by laws of any other state.'

"The answers to the above-set-out questions are important in that, if it is your opinion that the employee and his family are not protected under the circumstances set out, it may be necessary to propose legislation to take care of these matters."

There is a sharp conflict of authority as to whehter the workmen's compensation statutes have extraterritorial operation, and this conflict is based upon the views of the individual courts as to the general purposes of the statutes, and upon the provisions of the statutes themselves, rather than upon any general underlying principles of law.

The doctrine is put forward in some cases that the compensation statutes rest upon the basic principle that the business or industry shall, in the first instance, pay for accidental injuries as a business expense or a part of the cost of production; and, consequently, work done by an employee acting within the scope of his employment is presumably done to advance the business, although the work may be performed across the border of the state; and any accidents suffered by him while so engaged should be compensated by the business, precisely the same as if it were performed within the state boundary. Therefore, an employee, although injured outside of the state, is entitled to the benefit of the statute unless the statute itself clearly shows the intention of the Legislature to confine its operation to accidents occurring within the state.

In 58 Am. Jur., Workmen's Compensation, Section 36, page 600, it is said:

"It appears to be settled that a state may extend the provisions of a

Workmen's Compensation Act to persons working abroad under contracts entered into within the state. Some courts while conceding this proposition have taken the position that express words or a plainly expressed intent are essential in order that the act shall have this force and effect."

Under Section 298, Title 26, Code of Alabama 1940, the Legislature has expressly prohibited any right of action to recover damages for the death of an employee under the Workmen's Compensation Law in favor or for the benefit of any person who was not a resident of the United States at the time of the death of such employee. Compensation for the death of an employee is paid only to dependents of the employee who at the time of his death are actually residents of the United States. The place of the death appears to be immaterial.

It results, therefore, that your first question is answered in the negative.

Your second question relates to an injury to as distinguished from the death of an employee. Under the express provisions of Section 259, Title 26, Code of Alabama 1940, there may be a recovery if the contract of employment was made in Alabama and does not contain a provision that there shall be no recovery if the employee is injured outside of the State of Alabama.

It is to be noted that Section 259, supra, relating to injuries not causing death, does not limit its operation to the United States as does the statute relating to the death of an employee.

Your second quesion is, therefore, answered in the affirmative.

I do wish to point out, however, that the employee, to be fully protected, must have a contract or contracts entered into in Alabama which cover the entire time of his services outside of Alabama. In other words, if he was employed by the week or by the month under an Alabama contract, and after the expiration of these times his employment continued under directions of his employer made in Mexico of some other place other than Alabama, the courts might well hold that a new contract of employment existed which was not made in Alabama. See **Pound v. Gaulding**, 237 Ala. 387, 187 So. 468.

Some of the authorities that lead to the conclusions reached in this opinion are **Pound v. Gaulding**, supra; **St. Louis-San Francisco Ry. Co. v. Carros**, 207 Ala. 535, 93 So. 445; **National Cast Iron Pipe Co. v. Higgenbotham**, 216 Ala. 129, 112 So. 734; and others may be found in 3 A. L. R. 1351, 18 A. L. R. 292, 28 A. L. R. 1345, 35 A. L. R. 1414, 45 A. L. R. 1234, 59 A. L. R. 735, 82 A. L. R. 709, 90 A. L. R. 119.

Yours very truly,

SI GARRETT,

Attorney General.

July 9, 1954

Hon. Ralph W. Roberts
Director and State Registrar
Department of Health
Bureau of Vital Statistics
CAPITOL

Adoption—Health and Health Department—Records.

1. In case of a second adoption the State Registrar has authority to prepare a second record of birth in a new name with the name or names of the new adopting parent or parents after the final order of the second adoption has been issued .

2. The first certificate of adoption, along with the original certificate of birth, the decrees of the court, and the second certificate of adoption, may be filed and contained in the sealed package referred to in Title 27, Section 4, Code of Alabama 1940.

Opinion by Assistant Attorney General Lee.

Dear Sir:

Your request for an official opinion, bearing date of June 9, 1954, is as follows:

"Section 4, Title 27, 1940 Code of Alabama, authorizes the State Registrar of Vital Statistics of the Department of Health to make a new record of birth upon receipt of copy of a final order of adoption. This Section also requires the State Registrar to restore the original record upon receipt of copy of an order revoking an adoption .

"This letter is written to ascertain whether or not, in your opinion, a second order of adoption for the same child constitutes an annulment or revocation of the first adoption and authorizes the State Registrar to prepare a second record of birth in the new name and with the name or names of the new adopting parent or parents.

"We have received a final decree of adoption for a minor who was originally adopted June 18, 1943. At a later date custody of the child was taken from the foster parents and was given to the Bureau of Catholic Charities. This action was on the order of the Jefferson County Juvenile Court. This child has recently been adopted by new foster parents. On the basis of this adoption decree, our Department has been requested to prepare and furnish a new birth certificate.

"In the absence of a revocation order, we wish to know if the State Registrar is authorized to proceed to prepare another adoption certificate based on the recent decree. If so, what disposition should be made on the birth certificate prepared in conformity with Section 4, Title 27, on the basis of the 1943 decree of adoption?"

You ask if a second order of adoption for the same child constitutes an annulment or revocation of the first adoption. Title 27, Section 4, Code of Alabama 1940, specifically sets out the procedure for annulment or revocation of an adoption. In order for there to be an annulment or revocation of adoption, there must be compliance with the statutory requirements. From the information in your letter, there has been no such compliance here.

However, you ask further if the State Registrar has authority to proceed to prepare a second record of birth in the new name and with the name or names of the new adopting parent or parents. There does not need to be an annulment or revocation in order for the State Registrar to be authorized to prepare this second record of birth with the new name or names. Section 4, supra, provides in part as follows:

". . . Upon receipt of copy of any final order of adoption the state registrar of vital statistics shall cause to be made a new record of the birth in the new name, and with the name or names of the adopting parent or parents. He shall then cause to be sealed and filed the original certificate of birth with the decree of the court, and such sealed package shall only be opened upon the demand of said child, or his natural or adopting parents, or by the order of a court of record. Upon receipt of copy of order of annulment of adoption, he shall restore the original name of the child and the names of his parents to the record of birth of such child." (Emphasis supplied.)

The words "any final order of adoption," as used in this section, would clearly include a second final order of adoption. It is, therefore, my opinion that the State Registrar has authority to prepare a second record of birth in a new name after a second final order of adoption has issued.

You ask what disposition should be made of the birth certificate prepared in conformity with Section 4, supra, made pursuant to the first decree of adoption. This certificate may be filed along with the original certificate of birth, the decrees of the court, and the second certificate, all to be contained in the sealed package referred to in Section 4, supra.

Yours very truly,
SI GARRETT,
Attorney General.

July 14, 1954

Hon. Joe H. Williams
Superintendent of Banks
Department of Commerce
CAPITOL

Credit Unions—Banks and Banking—Loans.

A credit union may make Title 1, Classes 1 and 2, Federal Housing Administration loans to its members in an amount up

to and including the sum of $300.00 provided the member does not, at the time the loan is approved, owe the credit union any other "unsecured" indebtedness.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion bearing date of February 19, 1954, and supplemented with letter bearing date of March 29, 1954, is as follows:

"1. We have been requested to determine whether or not a credit union operating under a State charter in Alabama may make the following type of loans to its members:

Title 1, Classes 1(a), 1(b), 2(a) and 2(b), Federal Housing Administration insured loans.

"2. If the answer to the above is in the affirmative, can the credit union lend more than $300.00 to any one person which is the maximum amount for unsecured loans as provided in the credit union's bylaws."

Title 28, Section 290, Code of Alabama 1940, empowers the board of directors of a credit union to fix the maximum amount of unsecured loans and the maximum amount of secured loans that its members may obtain. This section is quoted, in pertinent part, as follows:

". . . . To determine the maximum individual share holding and the maximum individual loan which can be made with and without security. To have charge of investments other than loans to members. The duties of the officers shall be as determined in the by-laws. No member of the board or either committee shall, as such, be compensated."

The question presented at the outset is whether the loans referred to in Title 1, Classes 1 and 2, Federal Housing Administration Digest of Insurable Loans are to be classified as secured or unsecured loans. These types of insured loans are authorized by Title 12, U. S. C. A., Section 1703, Subparagraphs (a) and (b), as amended, Subparagraph (a) is quoted as follows:

"(a) The Commissioner is authorized and empowered upon such terms and conditions as he may prescribe, **to insure banks, trust companies, personal finance companies, mortgage companies, building and loan associations, installment lending companies and other such financial institutions,** which the Commissioner finds to be qualified by experience or facilities and approves as eligible for credit insurance, **against losses** which they may sustain as a result of loans and advances of credit, and purchases of obligations representing loans and advances of credit, made by them on and after July 1, 1939, and prior to July 1, 1955, for the purpose of **financing alterations, repairs, and improvements upon or in connection with existing structures, and the building of new structures, upon urban, suburban, or rural real property** (including the restoration, rehabilitation, rebuilding, and replacement of such improvements which have been damaged or destroyed by earthquake, conflagration, tornado, hurricane, cyclone, flood, or other catastrophe),

by the owners thereof or by lessees of such real property under a lease expiring not less than six months after the maturity of the loan or advance of credit. **In no case shall the insurance granted by the Commissioner under this section to any such financial institution on loans, advances of credit, and purchases made by such financial institution for such purposes on and after July 1, 1939, exceed 10 per centum of the total amount of such loans, advances of credit, and purchases.** The aggregate amount of all loans, advances of credit, and obligations purchased, exclusive of financing charges, with respect to which insurance may be heretofore or hereafter granted under this section and outstanding at any one time shall not exceed $1,750,000,000." (Emphasis supplied.)

Subparagraph (b) of said Section provides or otherwise establishes the maximum amounts of loans that may be made, the purpose of authorization, the type of construction (urban or rural), the length of time for which the loan is to run, and other regulatory information .

It will be observed that in Section 1703, Subparagraph (a), supra, provision is made wherein the loan insurance granted by the Federal Housing Commissioner is limited to a maximum of 10 percentum of the total amount of loans made. I am of the opinion that this restriction prevents the loan from being classified, commercially, as a "secured" loan.

In the case of **Barrett v. Shanks,** 313 Ill. App. 598, 40 N. E. 2d 590, it is said that the word "secure" means to give adequate pledge of payment to a creditor for an obligation. A creditor who takes a note for his debt is never understood to be a "secured" creditor; and a bond which carries nothing more than a mere promise to pay is no more security than a promissory note. When a note is "secured," it must mean that there is something behind it not common to the rights of other creditors. **Stickel v. Atwood,** 25 R. I. 456, 56 A. 687.

The loans referred to in Title 1, Classes 1 and 2, Federal Housing Administration Digest of Insurable Loans are not "secured" by mortgages on the real property which has been repaired, altered, or improved with the funds borrowed. The loans do not constitute a lien against the property and it is our understanding that the borrowers are not required to pledge any other specific collateral as "security" for the loan. The Federal Housing Administration indemnifies the qualified lending agency for a portion only of the amount of the loans made, and I am of the opinion that the loan must here be considered as being an "unsecured" loan.

Secttion 290, supra, provides that the board of directors of the credit union will fix the maximum amount of "unsecured" loans and the maximum amount of "secured" loans that may be made to any individual member thereof. The bylaws of the credit union limit the maximum amount of the "unsecured" type of loan to the sum of $300.00 that may be made to a member. There is no maximum limit to the "secured" type of loan shown in the credit union's bylaws.

The premises considered, in answer to your first inquiry, I am of the opinion that the credit union may make Title 1, Classes 1 and 2, Federal

Housing Administration insured loans to its members in an amount up to and including the sum of $300, provided the member does not, at the time the loan is approved, owe the credit union any other "unsecured" indebtedness.

It follows, therefore, that your second question must be answered in the negative.

Yours very truly,
SI GARRETT,
Attorney General.

July 16, 1954

Hon. Thomas H. Boggs
Solicitor, 17th Judicial Circuit
Linden, Alabama

Witnesses — Solicitors — Subpoenas — Opinions Overruled, Modified and Distinguished.

1. A witness summoned under the provisions of Act No. 818, General and Local Acts 1951, page 1451, failing to respond, is punishable under the provisions of Title 14, Section 406, Code of Alabama 1940.

2. Quarterly Report of Attorney General, Vol. 70, page 29, modified and extended.

Opinion by Assistant Attorney General Straub.

Dear Sir:

In your letter of May 22, 1954, and in our conversation relative thereto, you requested a reconsideration of an opinion of this office to Hon. Glenn F. Manning, dated January 29, 1953, and found in Quarterly Report of Attorney General, Vol. 70, page 29, in which it was held:

"1. There is no provision of law for the payment of witness fees and mileage for persons who appear in response to a subpoena issued by the solicitor as provided in Act No. 818, General and Local Acts 1951, page 1451.

"2. If a witness fails to respond to a subpoena issued by a solicitor under the provisions of Act No. 818, supra, the circuit court has no jurisdiction to issue an attachment or conduct contempt proceedings to enforce obedience to the solicitor's subpoena."

A copy of said opinion is attached. It will be noted that an error was made in the printed opinion as same pertains to question "c."

In requesting the reconsideration of the opinion, you referred to Title 14, Section 406, Code of Alabama 1940, which provides as follows:

"§ 406. Subpoena or citation; disobeying.—Whoever, having been duly served with subpoena or citation, legally issued, shall refuse or wilfully fail to obey the same, or shall secrete himself, or leave the place of his residence to avoid being served with a subpoena issued or that he has reason to believe will be issued for him in any cause pending in any court or in any matter before any legal authority, or, being present before any court of legal authority and called upon to give testimony, shall refuse to take an oath or affirmation, or, being sworn, or affirmed, shall refuse to answer any question, required by such court of authority to be answered, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than ten dollars nor more than five hundred dollars, to which may be added hard labor for the county for not more than sixty days. But this section shall not prevent summary proceedings for contempt."

The opinion found in Quarterly Report of Attorney General, Vol. 70, page 29, supra, while correctly answering the questions there presented, does not completely treat the problem of enforcing such a subpoena issued by a solicitor in view of the above quoted Code section.

Section 406, supra, applies to subpoenas issued "in any matter before any legal authority" as well as subpoenas issued by courts. This, in my judgment, includes subpoenas issued under Act No. 818, General and Local Acts 1951, page 1451.

Upon reconsideration, it is my opinion that while a witness summoned by a solicitor when the grand jury is not in session may not be paid for his attendance, is not subject to attachment, and is not subject to contempt proceedings, yet he may be punished under the provisions of Title 14, Section 406, Code of Alabama 1940.

The opinion found in Quarterly Report of Attorney General, Vol. 70, page 29, is hereby modified and extended to conform to this opinion.

Very truly yours,
SI GARRETT,
Attorney General.

July 21, 1954

Hon. Frank B. Lloyd,
Judge of Probate,
Crenshaw County,
Luverne, Alabama.

Elections—Officers and Offices—Sheriffs.

1. A candidate for sheriff in the May 4, 1954, Democratic primary who failed to file on time his pre-election expense ac-

count may be a write-in candidate in the general election to be held in November, 1954, under Title 17, Sections 155 and 162, Code of Alabama 1940.

2. A candidate for sheriff in the May 4, 1954, Democratic primary who failed to file on time his pre-election expense account is not disqualified thereby from holding office if elected in the general election to be held in November, 1954, as a write-in candidate.

3. Under Title 17, Sections 155 and 162, Code of Alabama 1940, in order to vote for a person whose name is not printed on the ballot, the voter must personally write the name of the person on the ballot in a proper place thereon if the voter is capable of doing so, and a rubber stamp cannot be used for such purpose.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of July 13, 1954, is in part as follows:

"(1) Can a person who was a candidate for sheriff of this county who failed to file his pre-election expense account within the time prescribed by Title 17, Section 279, Code of Alabama of 1940, and whose name was subsequently stricken from the ballot in said second Democratic primary, be either an independent candidate or a write-in candidate under either Title 17, Sectioon 162, or Title 17, Section 155, in the general election of November 1954

"(2) Would not such a person as referred to in the preceding question be disqualified from holding office even though successful as either an independent or write-in candidate in the November 1954 election under the provisions of Title 17, Section 281, Code of Alabama of 1940?

"(3) Under the provisions of Title 17, Section 162, Code of Alabama of 1940, can a rubber stamp be used to insert the name of a candidate or must the elector actually write in the name of such candidate in the elector's own handwriting?"

In order for one to be an independent candidate whose name will appear on the ballot, he must file his declaration of candidacy before the first Tuesday in May in the year in which a state-wide primary election is held. Title 17, Section 145, Code of Alabama 1940, as amended by Act No. 79, General Acts 1945, page 76. So, in answering your questions, I will refer to the sheriff as a write-in candidate rather than as an independent candidate so as to avoid any confusion.

Under Title 17, Section 280, Code of Alabama 1940, if the pre-election statement of expenses is not filed, the candidate's name shall not be placed upon the ballot to be used in such election. There is nothing in this provision which disqualifies the sheriff from holding office if he is successful

as a write-in candidate in the general election to be held in November, 1954. The general election and the primary election are separate elections.

Both Sections 155 and 162, Title 17, Code of Alabama 1940, provide that an elector may vote for any person whose name does not appear on the ballot by writing the name in the proper place on the blank column.

In the preparation of the official ballot to be used in the general election in November, 1954, the law provides for a blank column on the ballot which may be used by the voters to write in the name of a person they desire to vote for whose name is not printed upon the ballot as a regular candidate.

In **Walker v. Junior**, 247 Ala. 342, 24 So. 2d 431, our Supreme Court said: "Our election law does authorize an elector desiring to vote for a person whose name does not appear upon the official ballot to do so by writing the name of such person in a proper place thereon, § 162, Title 17, Code 1940, but this character of voting pre-supposes the distribution and use of an official ballot, ..."

It is my opinion, therefore, that your first question should be answered in the affirmative.

The statement of expenses referred to in Title 17, Section 281, Code of Alabama 1940, is the statement required to be made after the primary election of May 4, 1954, when your inquiry deals only with the failure to file the pre-election expense account. In addition, the certificate of election or nomination referred to in Section 281, supra, is, under the facts presented by you, one relating only to the primary election of May 4, 1954, and not to the general election to be held in November, 1954.

Your second question should, therefore, be answered in the negative.

Section 162, supra, provides as follows:

"If the elector desires to vote for any person whose name does not appear upon the ballot, he can so vote by writing the name in the proper place on the blank column."

In 29 C. J. S., Elections, Section 180, page 263, it is said:

"In most jurisdictions the voter may write on the ballot the name of a person for whom he wishes to vote. Statutory provisions with respect to the manner, form, and place of such writing-in must be complied with."

In 18 Am. Jur., Elections, Section 191, page 308, the following is stated: "If the manner of inserting is not prescribed by statute, it may be done in any appropriate way, such as by writing, by stamping with a metallic or rubber stamp, or by a sticker; . . . ."

But here our statutes expressly require that "he can so vote by writing the name in the proper place on the blank column."

In **McFarland v. Spengler**, 199 Cal. 147, 248 Pac. 521, it was held that

use of stickers is not writing in of name. It was further held in **Hall v. Sumner**, 194 Ky. 1, 238 S. W. 197, that one whose name is not printed on the ballot may be voted for, his name must be written thereon by the voter personally unless he makes oath to illiteracy, blindness, or physical inability. The court there said:

". . . The requirement that the elector, when he desires to vote for one whose name is not printed upon the ballots to himself write the name on the ballot, has for its purpose the tendency to the concealment of the elector's choice, and a provision requiring secrecy of the ballot is mandatory, whether desired by the elector or not."

Your inquiry relates to matters before and during the general election in November, 1954, and not to the effect of voting by rubber stamp after the election has been held. In this latter case, I wish to refer you to **Garrett v. Cunninghame**, 211 Ala. 430, 100 So. 845, which deals with such matters. The **Garrett v. Cunninghame** case does have this to say, however:

"Had sufficient space been given on the ballot for the writing of the name, at the appropriate place, of another qualified person for the office of judge of probate than that printed thereon, there would have been no excuse for stamping the ballots as they were stamped, and no excuse to have inquired of the voter what kind of ballot was desired. Gen. Acts 1915, p. 222, § 16."

Assuming, therefore, that a proper ballot will be prepared for the November election which will provide a place for writing in the name of a candidate if the voter so desires, I am of the opinion that the voter must personally write the candidate's name on the ballot if he is capable of doing so. I do not believe the law intends the use of a rubber stamp for those desiring to vote for one whose name does not appear on the ballot.

It is my opinion, therefore, that your third inquiry should be answered in the negative.

Yours very truly,
SI GARRETT,
Attorney General.

July 21, 1954

Hon. Edward H. Reynolds
County Solicitor
Macon County
Notasulga, Alabama

Courts—Jurisdiction—Highways and Highway Department—United States.

Courts of the State of Alabama do not have jurisdiction over a person accused of violating the State speed laws when such act

was committed on a highway which is owned by the Federal Government and which is a part of the property over which jurisdiction has been ceded to the Federal Government by the State of Alabama.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of May 25, 1954, is as follows:

"I would appreciate having your opinion on the following question of law:

" 'Do the State Courts have jurisdiction of a person accused of violating the state speed laws when such act was committed on a highway leading to a government (U.S.) owned reservation, and such highway is owned by the federal government but is not within the reservation.' "

The answer to your question is in the negative, provided that the highway is a part of the property over which jurisdiction has been ceded to the United States by the State of Alabama.

The highwawy in question leads to the Veterans' Hospital at Tuskegee and belongs to the Federal Government. Jurisdiction over the property on which the Veterans' Hospital is situated has been ceded to the Federal Government by the State of Alabama by instrument recorded in the Secretary of State's office. The cession of jurisdiction was accepted by the Administrator of the Veterans' Hospital by instrument recorded in the Secretary of State's office. See 54 Stat. 1083, 40 U. S. C. A., Section 255.

The cession of jurisdiction and the acceptance thereof contain certain exceptions; however, those exceptions do not relate to criminal jurisdiction.

I is, therefore, my opinion that the courts of the State of Alabama do not have jurisdiction over a person accused of violating the State speed laws, provided such act was committed on a highwway owned by the Federal Government, and provided that the highway is a part of and is included in the description of the property over which jurisdiction has been ceded by the State of Alabama to the Federal Government and such cession has been accepted by the Federal Government. See Title 59, Section 19, Code of Alabama 1940; **Fort Leavenworth R. R. Co. v. Lowe**, 114 U. S. 525, 5 S. Ct. 995, 29 L. Ed. 264; Quarterly Report of Attorney General, Vol. 23, page 227.

Yours very truly,

SI GARRETT,

Attorney General

July 21, 1954

Mrs. C. F. Hart
Tax Assessor
Covington County
Andalusia, Alabama

Taxation—Exemptions—Radios—Television.
A television receiver installed in a home is subject to ad valorem taxation.

Opinion by Assistant Attorney General Gish.

Dear Madam:

Your request for an official opinion, bearing date of February 3, 1954, is as follows:

"At a meeting of the Equalization Boards yesterday, it was discussed as to whether or not Televisions are taxable and they ask the Board of Covington County to get this information from you. So will you write me at your earliest convenience as to whether or not a Television installed in a home would be taxable."

Title 51, Section 2, Code of Alabama 1940, as amended by Act No. 953, General and Local Acts 1951, page 1626, provides that the "following property and persons shall be exempt from ad valorem taxation and none other: . . . ."

Television receivers are not specifically exempt under Section 2, supra. Neither the Court of Appeals nor the Supreme Court of Alabama has had occasion to consider the application of the provisions of Section 2, supra, to a television receiver.

Under subsection (q) of Section 2, as amended, supra, radios are exempt from ad valorem taxation. It may be argued that television receivers are exempt under this provision.

It is well settled that exemptions from taxation must be strictly construed in favor of the taxing power. **Holt v. Long,** 234 Ala. 369, 174 So. 759; **Hawkins, Probate Judge v. Pure Oil Company,** 232 Ala. 660, 169 So. 307; **State v. Bridges,** 246 Ala. 486, 21 So. 2d 316.

While radio and television receivers are similar articles and have many of the same characteristics, it is obvious, for the purposes of this statue, that they are not identical.

Therefore, it is my opinion that a television receiver installed in a home is not exempt from ad valorem taxation under the provision exempting radios from such taxation. Cf. Quarterly Report of Attorney General, Vol. 52, page 10.

Under subsection (j) of Section 2, as amended, supra, household and kitchen furniture, not to exceed $500.00, is exempt from ad valorem taxation.

It may be argued that television receivers are exempt under this provision.

In the case of **In Re Michealson,** 113 Fed. Sup. 929, the United States District Court held that a television receiver is not exempt as "household furniture" or a "musical instrument" within a Minnesota statute providing that musical instruments for the use of the family, certain enumerated household effects, and all other household furniture shall not be liable to attachment.

The opinion in this case reads in part as follows:

> "There may be reasons why in view of the changes in the way of life of the common person resulting from changes occurring in the arts and sciences, both radio and television sets should be exempt in the hands of a debtor. The possession of such instruments may well be considered reasonably essential to the well being, needs and happiness of the family living in today's world but 'progressiveness permits no court to read into any law that which it cannot fairly be said the Legislature put there.'"

In the case of **Tanner v. Billings,** 18 Wis. 173, 86 Am. Dec. 755, the Wisconsin court held that a statute providing that certain specified articles of household furniture shall be exempted from sale on execution, and all other household furniture not enumerated, not exceeding $200.00, does not include a piano, though its value is less than $200.00. In rendering this decision the Court said in part as follows:

> " . . . The obvious design of this provision was to enable the debtor to select from the usual articles of furniture, such as chairs, tables, stands, etc., an amount of the value mentioned. But a piano is a thing of so peculiar and distinct a character, that it is clear, from the manner in which this statute is drawn, that if the legislature had designed to exempt it, they would have specifically mentioned it."

The same construction should be placed upon subsection (j), as amended, supra, as was placed upon the Wisconsin and Minnesota statutes in **Tanner v. Billings,** supra, and **In Re Michealson,** supra. Therefore, it is my opinion that television receivers installed in a home are not exempt from taxation under subsection (j), supra.

I am familiar with the fact that recently this office held that the term "radio advertising" included "television advertising." See opinion to Mrs. Agnes Baggett, Secretary of State, under date of March 31, 1954. This opinion, however, construed a section of the Corrupt Practices Act (Title 17, Section 272, Code of Alabama 1940, as amended by Act No. 592, General and Local Acts 1951, page 1024), and held that the term "radio advertising" was intended to refer to a means or media of advertising including television advertising. It was further held that, in connection with the Corrupt Practices Act, supra, and in exempting certain advertising, the Legislature had in mind a means of cummunication based upon electronics and radio waves, and did not have in mind the radio or television receiver. The rule of strict construction was not there applicable.

Here, however, it is my view that the Legislature did not have a means of communication or advertising in mind when it exempted "radios" from ad valorem taxes under the provisions of subsection (q) of Section 2, as amended, supra, but rather had in mind a radio receiving set. I recognize the similarity between a radio receiver and a television receiver; but, in my opinion, the articles are not sufficiently similar for the one (radio receiver) to include the other (television receiver).

Premises considered, I am of the opinion that a television receiver installed in a home is subject to ad valorem taxation.

Very truly yours,
SI GARRETT,
Attorney General

July 22, 1954

Hon. J. P. Shaffer, Clerk
Montgomery County Board of Revenue
Montgomery, Alabama

Counties—Montgomery County—Records.
The Montgomery County Board of Revenue may not legally expend funds for the purpose of microphotographing records kept by county officials.

Opinion by Assistant Attorney General Sanders.

Dear Sir:

Your request for an official opinion, bearing date of April 15, 1954, is as follows:

"The facilities for storing or protecting the valuable records of Montgomery County in the Court House are inadequate and the possibility of their destruction by fire, theft or vandalism is great. The Montgomery County Board of Revenue would like your office to tell them if it would be a legal expenditure of funds to microfilm certain of these records of the Probate Office, Tax Assessor and Collector, and the Circuit Courts, or any other records the Board of Revenue thought important. These microfilm records can be safely stored in a bank or other place for safekeeping.

"If your answer is yes, would it be legal to buy equipment, rent equipment, or contract for the work of producing the microfilm records?

"We have your recent opinion (dated January 15, 1954) to the County Attorney of Dallas County, saying it was legal to microfilm records of the Probate Judge of Dallas County who is on a salary. In Montgom-

ery County the Board wishes your opinion on all records of all offices, both on a fee basis and salary."

The answer to your first question is in the negative, and consequently consideration of your second question is unnecessary. That is to say, I find no statutory authority which would permit the expenditure of funds by the Montgomery County Board of Revenue for the purpose of microphotographing county records.

There is no general authority for county governing bodies to make such expenditures. Title 12, Section 12, Code of Alabama 1940, as amended in respects not here material, enumerates the powers of the courts of county commissioners, but I find therein nothing which authorizes such courts to provide for microphotographing of records.

The local act which abolished the Court of County Commsisioners of Montgomery County and created in its place the Board of Revenue (Act No. 155, Acts of 1876-77, page 162) conferred no additional powers of this nature.

Title 12, Section 123, Code of Alabama 1940, provides that certain county officials "must be allowed reasonable expenses, for suitable books, stationery, postage stamps used exclusively for official business, and telephones to be paid for by the county, on the approval of the . . . board of revenue . . ." I do not construe the word "stationery," however, as including either microphotographing equipment or the microfilm copies.

Act No. 306, Local Acts 1915, page 193, provides:

"That the board of revenue of Montgomery County is hereby authorized and empowered to furnish the several offices of said county with equipment and conveniences, including janitor service and telephone service, as may in the discretion of said board be necessary or proper for the conduct of the public business of said county." (Emphasis supplied)

It is my opinion that the phrase "equipment and conveniences," in order not to give the statute too broad a scope, should, by interpolation, be limited to "office" equipment and conveniences; that is to say, those items of furniture, stationery, supplies and services which might customarily be found in the ordinary county office. This would not, in my opinion, include equipment for microphotographing.

The opinion of this office to which you refer, rendered to Hon. Thomas G. Gayle, County Attorney, Dallas County, under date of January 15, 1954, held that the county governing body of Dallas County was authorized to purchase microfilm copies of records kept in the office of the probate judge of that county. The holding was based on a local act (Act No. 215, General and Local Acts 1951, page 487) which implemented the constitutional amendment placing the probate judge on a salary basis and provided that the county governing body might expend from the general fund" for efficient operation of the offices of Judge of Probate . . . any amounts deemed to be reasonable and necessary." The purchase of microfilm records

was found to be an action which the county governing body might take, in its discretion, under authority of this statute.

In Montgomery County, however, no similar authority is conferred, either by the constitutional amendment which authorized certain officers to be placed on a salary basis (Amendment IV, Constitution of 1901, proclaimed ratified November 22, 1916), or by the various local enabling acts, referring to these officers, or by any other statute, either local or general.

Nor can the desired authority be found in those statutes, relating to the duties of public officials, which require such officials to keep the records of their respective offices in safe and secure fashion. See, for example, with respect to the records of the office of the judge of probate, Title 13, Section 280(3), Code of Alabama 1940, which requires said officer to keep all the books, papers and records belonging to his office with care and security. This section and other similar statutes obviously relate to the preservation of original records; they impose no duty to take affirmative action to duplicate said records.

Recent legislation has given to certain officials the authority to have records of their respective departments microphotographed. These officials are the Commissioner of Public Welfare (see Act No. 57, General and Local Laws, 5th Ex. Sess., 1950, page 121 (Title 49, Sections 17(28)-17(30), 1953 Cumulative Pocket Part, Code of Alabama 1940)); the Commissioner of Revenue (see Act No. 703, General Acts 1947, page 541, as amended by Act No. 65, General and Local Acts 1953 ,page 96 (Title 51, Sections 131(1)-131(3), 1953 Cumulative Pocket Part, Code of Alabama 1940)); the State Superintendent of Education and each of the several city and county superintendents of education (see Act No. 826, General and Local Acts 1953, page 1113 (Title 52, Sections 1(3)-1(5), 1953 Cumulative Pocket Part, Code of Alabama 1940)).

Thus it will be seen that county superintendents of education are the only officials on the county level who are mentioned in the legislation on this subject. Section 1 of Act No. 826, supra, provides that: "The State Superintendent of Education and each of the several city and county superintendents of education may cause any records, documents, books, papers, or writing made, acquired or received as required by law, to be photographed, on plate or film."

Having found specific statutory authority for the microphotographing of certain county records, we turn to the next question—whether or not, in the light of such authority, the Montgomery County Board of Revenue has the power to make expenditures for such purpose. The answer is found in Title 52, Section 130, Code of Alabama 1940, which reads in part as follows: "The county board of revenue or court of county commissioners shall also provide necessary furniture, office equipment, stationery, postage, forms, and supplies required by the county superintendent of education and his assistants."

It needs no demonstration to say that neither microphotographing equipment nor the microfilm copies of records are "furniture," "office equip-

ment" (again, by interpolation, we must read customary office equipment), "stationery," "postage," "forms," or "supplies." Our statutes give no other authority to the county governing bodies, or to the Montgomery County Board of Revenue in particular, to make expenditures for any items of this nature to be used by the office of the county superintendent of education, except those enumerated. Nor is any authority to furnish either the equipment or the microfilm copies conferred upon county governing bodies by Act No. 826, supra.

I conclude, therefore, that there is no authority for an expenditure of county funds in order to microphotograph records kept by the superintendent of education, or by any other county officials in Montgomery County.

County governing bodies are vested only with such powers as are expressly granted to them by law. In order to make the expenditure in question, specific authority therefor must be found in the provisions of a local act or of the general law establishing and delineating the jurisdiction of such bodies. Nowhere do I find authority vested in the Montgomery County Board of Revenue to expend county funds for the microfilming of county records.

Yours very truly,
SI GARRETT,
Attorney General

August 2, 1954

Dr. O. C. Carmichael,
President, University of Alabama,
University, Alabama.

University of Alabama—Trusts and Trustees—Opinions Overruled, Modified and Distinguished.

1. The Board of Trustees of the University of Alabama may, in the exercise of reasonable business prudence, invest trust funds not otherwise prohibited by the terms of the trust in such of the mortgages guaranteed in whole or in part by the Administrator of Veteran's Affairs which the Board of Trustees considers to be sound investments, and which mortgages meet the conditions set forth in subsection (f) of Section 47, Title 58, Code of Alabama 1940, as amended by Act No. 763, General and Local Acts 1951, page 1330.

2. Opinion reported in Quarterly Report of Attorney General, Vol. 72, page 25, modified.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of July 20, 1954, is as follows:

"On August 7, 1953, you rendered to us an opinion construing Title 58, Section 47 of the Code of Alabama 1940, as amended, in light of Act No. 234 of the General Acts of Alabama, 1915, Page 286. We would like to have this opinion extended so as to include an answer to the following question:

"Can the Board of Trustees of the University of Alabama invest trust funds in mortgages guaranteed in whole or in part by the administrator of veterans' affairs of the United States?"

In the opinion to which you refer, rendered on August 7, 1953, and reported in Quarterly Report of Attorney General, Vol. 72, page 25, I was requested to advise whether the Board of Trustees of the University of Alabama may legally invest its endowment funds in mortgages which had been accepted for insurance by the Federal Housing Administrator, pursuant to Title 2 of the National Housing Act.

In answering that question in the affirmative, I said:

"Title 58, Section 47, Code of Alabama 1940, as amended by Act No. 763, General and Local Acts 1951, page 1330, provides that a trustee may invest funds in securities or investments which, at the time of the making or purchase thereof, are, among others, 'mortgages guaranteed or insured in whole or in part by the Federal Housing Administrator.' "The said amendment to section 47, supra, repealed any statute in conflict therewith."

It is my opinion that the above quoted parts from the opinion of August 7, 1953, supra, were not only unnecessary to a proper conclusion as to the question there presented, but also contained an inadvertent statement as to trustees being authorized by Title 58, Section 47, Code of Alabama 1940, as amended by Act No. 763, General and Local Acts 1951, page 1330, to invest funds in "mortgages guaranteed or insured in whole or in part by the Federal Housing Administrator."

I now reaffirm the conclusion reached in the opinion of August 7, 1953, supra, but the same is modified so as to base the conclusion there reached solely on the provisions of Title 58, Sections 49 and 50, Code of Alabama 1940, and the case from the Supreme Court of Alabama cited therein.

In both of the requests for an opinion on the questions under discussion,

you made reference to Act No. 234, General Acts 1915, page 286, which is as follows:

"Section 1. That the board of trustees of the University of Alabama is authorized in its discretion, to invest the endowment fund of that institution, in whole or in part, as it may from time to time determine, in approved real estate securities. Provided, that the funds of the University shall not be invested in any mortgage, except it be a first lien on a fee simple title and not for a greater sum than the land is assessed for taxation, nor than sixty per cent of its real cash value.

"Sec. 2. That all laws and parts of laws in conflict with this act are hereby repealed."

Act No. 234, supra, was not placed in the 1923 Code of Alabama. It was not, however, repealed by such omission, because of Section 12 of said Code.

The laws relating to public schools and education were, however, codified into the Alabama School Code of 1927. This Code became effective on the 1st day of October, 1927, in pursuance of the Governor's Proclamation contained in such Code. Act No. 234, supra, was not contained in the Alabama School Code of 1927, and was, therefore, in my opinion, repealed as of the 1st day of October, 1927.

Act No. 234, supra, was likewise not placed in the 1940 Code of Alabama. Its omission therefrom would, in my opinion, result in its repeal had it not already been repealed by its omission from the Alabama School Code of 1927. Title 1, Section 9, Code of Alabama 1940.

Act No. 234, supra, did not, in my opinion, grant any rights, properties, privileges, or franchises to the University of Alabama which it did not already have. The Board of Trustees of the Unviersity already had the right, in my opinion, to invest its trust funds in proper securities, and the effect of Act No. 234, supra, was the limitation or regulation of a right which already existed. This being true, neither Section 548 of the Alabama School Code of 1927, nor Section 491, Title 52, Code of Alabama 1940, would prevent the repeal of Act No. 234, supra as aforesaid.

In addition to what has been said above, there is some basis for argument that Act No. 234, supra, was impliedly repealed by the passage of Act No. 53, General Acts 1935, page 124, now Section 50 of Title 58, Code of Alabama 1940, or by the passage of Act No. 33, General Acts 1935, page 65, as amended by Act No. 86, General and Local Acts, Ex. Sess. 1936-37, page 99, now Section 47 of Title 58, Code of Alabama 1940, or by the passage of Act No. 152, General Acts 1939, page 226, now Section 49 of Title 58, Code of Alabama 1940.

Be that as it may, however, I am of the opinion that for some one or more of the reasons above given Act No. 234, supra, is no longer the law.

I have given consideration to Section 47, as amended, supra. It does not, in my opinion, contain therein any specific authority for a trustee or

fiduciary to invest trust funds in mortgages guaranteed in whole or in part by the Administrator of Veteran's Affairs of the United States as does Sections 49 and 50, supra, as to mortgages insured by the Federal Housing Administrator.

Under Section 47, as amended, supra, a trustee or one actnig in any other fiduciary capacity may, with the exercise of reasonable business prudence, in addition to any other investments now permitted by law, invest funds in securities or investments, which, at the time of the making or purchase thereof, are included in one or more of the classes set forth in the section. Among those classes is one which authorizes the investment under certain provisos in "promissory notes, bonds, or other evidences of indebtedness secured directly or collaterally by mortgage or trust deed which is a first lien on improved real estate in this or any other state of the United States of America."

The general rule as to such investments is stated in 54 Am. Jur., Trusts, Section 395, to be that "trust investments may be made in loans secured by mortgages that are a first encumbrance on real estate, where the value of the mortgaged property affords an adequate margin of safety." In **Foscue v. Lyon,** 55 Ala. 440, the court there said:

> "Ordinarily, in the absence of all evidence of facts showing the contrary, a loan or advance, not exceeding in amount two-thirds of the value of the real estate conveyed by the mortgage, is regarded as prudent; and the trustee is not responsible for loss which may ensue from the subsequent deterioration in value of the premises."

In the case of the mortgages here inquired about, in addition to the value of the real estate as compared with the amount of the loan, each mortgage is guaranteed in whole or in part by the Administrator of Veteran's Affairs of the United States. This is an additional factor to be taken into consideration in determining the advisability of the investment. In 54 Am. Jur., Trusts, Section 424, page 337, the following is stated:

> "In making trust investments in loans and mortgages, it is the duty of a trustee to exercise that care, diligence, and skill which an ordinarily prudent man in the conduct of his own affairs under similar circumstances would exercise, having in view the fact that the trustee is a fiduciary under duty to make investments that are, first, safe, and second, income-producing. Among the facts and circumstances to be taken into consideration are: the ratio of the trust investment to, or its percentage of, the value of the property subject to the mortgage, payment or delinquency of payments of principal and interest in the case of an investment in an existing mortgage, payment or delinquency of taxes on the mortgaged property, insurance on such property, the solvency and personal credit of the mortgagor or his estate or other personal security, such as the personal obligation of an indorser of the mortgage note or bond, and the income that is being earned or may be expected from the investment, both as it relates to the object of the trust to have the trust estate productive and to a lesser extent as it

relates to the question of safety. All such factors are to be considered, however, as they exist at the time of the investment, and not by subsequent developments not reasonably foreseeable at that time."

The pertinent parts of Section 47, as amended, supra, relating to the classes of investment which a trustee, or anyone acting in any other fiduciary capacity, may make are the following:

". . . (f) Promissory notes, bonds or other evidences of indebetdness secured directly or collaterally by mortgage or trust deed which is a first lien on improved real estate in this or any other State of the United States of America; provided that (1) no interest or participation in any note, bond, or other evidence of indebtedness secured by mortgage shall hereafter be purchased for any fiduciary account unless the entire principal indebtedness secured by the mortgage shall at the time be controlled by the fiduciary, that (2) no such interest or participation less than the entire indebtedness shall at any time be sold by the fiduciary to any person, estate, trust or other entity, not controlled by the fiduciary, and that (3) no fiduciary shall hereafter purchase from any trust or estate under its control or from itself for any trust or estate any such loan, bond, or other evidence of indebtedness secured by mortgage, or interest therein, unless the items so acquired shall in good faith and with due diligence have originally been made or acquired by the fiduciary for trust investment; and provided further that this section shall not, in so far as the same is prohibited by the constitution of this state, authorize the investment of such funds in the stocks or bonds of private corporations. . . . (h) Bonds, the issuance of which has been authorized by the Securities Commissioner of the State of Alabama, and which are secured directly or collaterally by mortgages or trust deeds which are first liens on improved real estate in this or any other State of the United States of America; provided (A) that the value by appraisal of the realty must be not less than one and one-half (1½) times the amount of any mortgage secured by said realty except: (1) mortgages guaranteed or insured in whole or in part by the Federal Housing Administrator, or (2) mortgages guaranteed or insured in whole or in part by the Administrator of Veteran's Affairs of the United States. . . ."

In 11 C. J., Colleges and Universities, Section 18, page 991, it was said: ". . . . While the funds of a college or a university must not be used for the personal and private ends of an individual, the institution may invest its funds in proper securities, ..."

It is my opinion from what has been said above that the Board of Trustees of the University of Alabama may, in the exercise of reasonable business prudence, invest trust funds not otherwise prohibited by the terms of the trust in such of the mortgages guaranteed in whole or in part by the Administrator of Veteran's Affairs which the Board of Trustees considers to be sound investments within the rules prescribed herein, and which mortgages meet the conditions set forth in subsection

(f) of Section 47, as amended, supra. **Cass v. Yale University,** 107 Ill. App. 518; Opinion of the Justices, 244 Ala. 456, 13 So. 2d 559.

I am of the further opinion that, in investing the trust funds of the University, the Board of Trustees acts in a fiduciary capacity within the meaning of Section 47, as amended, supra, and that this section is authority for the conclusion herein reached whether or not Act No. 234, supra, has in fact been repealed.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 2, 1954.

Dr. W. J. Terry,
State Superintendent of Education,
Department of Education,
CAPITOL.

County Boards of Education—Budget Act—Buildings—Warrants.

A county board of education may, with the approval of the State Superintendent of Education, issue capital outlay warrants under Title 52, Section 216, Code of Alabama 1940, during the same fiscal year in which a school building is erected, to complete the payment of the balance due on the cost of constructing the building.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of July 21, 1954, is as follows:

"Your opinion is requested on the following question:

"Article 4, Title 52, Code of Alabama 1940, permits boards of education to issue and sell capital outlay warrants for the purposes of 'erecting, purchasing, altering, enlarging, improving, repairing, and equipping school buildings and school playgrounds, and buildings for housing and repairing school busses, including sites for any such buildings and playgrounds; and for the purpose of purchasing school busses; * *' If a county board of education has already in the present year constructed

a building, the cost of which has created a deficit for this fiscal year, can this board of education sell capital outlay warrants to pay for the deficit already incurred in this fiscal year?"

Title 52, Section 236, Code of Alabama 1940, as amended by Act No. 82, General and Local Acts 1953, page 126, provides in part as follows:

" . . . no county or city board of education, or superintendent thereof, shall approve any budget for operation of the school for any fiscal year which shall show expenditures in excess of income estimated to be available by the various State and other officials as required in Sections 238 and 239 of this Title plus any balances on hand, **except under conditions set forth by the laws of the State governing the issuance of school warrants.**" (Emphasis supplied.)

A county or city superintendent of education may, during any fiscal year, make such changes within the budget as are deemed desirable, provided that schools are operated for the State minimum term according to rules and regulations of the State Board of Education, and provided that a deficit is not incurred by such change or changes. Title 52, Section 241, Code of Alabama 1940.

In estimating income for any fiscal year, the amount of funds to be obtained by the issuance of school warrants authorized by the laws of this State is included in the budget. Title 52, Section 242, Code of Alabama 1940.

Section 242, supra, contemplates, subject to the exception contained in Section 236, as amended, supra, that a county or city board of education shall not spend or obligate itself to spend in any fiscal year more than the estimated income available to the board for that year. If there is a deficit, the penalty is that the allotment for the next fiscal year from the Minimum Program Fund is reduced in an amount equal to one-fourth of said deficit.

You state that the county board of education has already, in the present fiscal year, constructed a building, the cost of which has created a deficit for this fiscal year. This statement as to there being a deficit is true only if the county board of education is without authority now to issue warrants to finish paying for the school building which has already been erected.

Title 52, Section 216, Code of Alabama 1940, provides in part as follows:

"In any county in which a special county tax shall have been voted under the constitution for such purpose or for school purposes generally, and in any school district in which a special district tax shall have been voted under the constitution for such purpose or for school purposes generally, the county board of education or the city board of education, as the case may be, with the approval of the state superintendent of education may issue and sell capital outlay warrants for the purposes of erecting, purchasing, altering, enlarging, improving, repairing, and equipping school buildings and school playgrounds, and

buildings for housing and repairing school busses, including sites for any such buildings and playgrounds; and for the purpose of purchasing school busses; and for the purpose of acquiring a school building already erected by another government body, which building is being transferred to the use and jurisdiction of the board issuing the warrants; or for any one or more of such purposes; . . . ."

Section 216, supra, does not state when the warrants are to be issued, and in some instances good business judgment might dictate that the board should not obligate itself to pay interest on warrants until the money is actually needed in payment of the cost of the construction of a school building.

Section 216, supra, is clear to the conclusion that warrants can be issued for the purpose of erecting a school building.

It is my opinion that, if the special school taxes have been voted as provided in Section 216, supra, the county board of education can now, during the same fiscal year the building was erected, with the approval of the State Superintendent of Education, issue capital outlay warrants to finish paying for the building which has already been erected.

The issuance thereof is, in my opinion, within the authorized purposes for which capital outlay warrants may be issued as set forth in Section 216, supra.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General.
(Title 55, Section 239,
Code of Alabama 1940)

August 5, 1954

Hon. E. C. Laslie, Chairman
Macon County Board of Revenue
Tuskegee, Alabama

Elections—County Democratic Executive Committee—Publications—Counties.

The cost of publishing the resolutions adopted by a County Democratic Executive Committee, setting out the qualifications and fees to be required of candidates for the various county

offices, should be borne by said committee and not by the county as a part of the primary election costs.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of June 9, 1954, is as follows:

"Heretofore, the Macon County Democratic Executive Committee has prior to each primary election passed resolutions setting forth the qualifications and fees to qualify candidates for the respective county offices to be nominated at such primary. These resolutions have been published in the newspaper in order to notify all who wish to qualify of the requirements to be met.

"The costs of publishing these resolutions has been treated as a part of the primary election costs and paid out of the funds set aside for that purpose. Please advise us whether or not the costs of such publication is a proper charge to be paid as a part of the cost of the primary."

I am of the opinion that your question should be answered in the negative.

I am unable to find any statutory requirement that resolutions by a County Democratic Executive Committee, concerning the qualifications and fees required of candidates for the various county offices, be published in a newspaper prior to the primary election. Neither can I find any authority for such action by a County Democratic Executive Committee.

I must, therefore, conclude that the action of a County Democratic Executive Committee in publishing its own resolutions in a newspaper was based on the authority vested in the Democratic Party of Alabama. Since the passing of resolutions and the advertising thereof by a County Democratic Executive Committee is strictly a party matter, the expense of said publication would also be a party matter.

Moreover, it is my opinion that the provisions of Title 17, Section 343, Code of Alabama 1940, relating to the payment of expenses of elections, do not apply to the publication of resolutions by a County Democratic Executive Committee concerning qualifications and fees to be exacted of candidates for county offices. The expenses referred to therein relate to those authorized by statute.

In view of the above, it is my opinion that the costs of publishing in a newspaper the resolutions of the Macon County Democratic Executive Committee, setting out the qualifications and fees to be required of candi-

dates for the various county offices, should be borne by said committee and not by Macon County as a part of the primary election costs.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General.
(Title 55, Section 239,
Code of Alabama 1940)

August 6, 1954

Hon. J. Massey Edgar
County Attorney
Choctaw County
Butler, Alabama

National Guard—Military and Naval Affairs—Counties—Municipalities.

A county governing body may appropriate money to aid in the construction of a building on property owned by a municipality within the county for storing Alabama National Guard equipment.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of February 8, 1954, is as follows:

"A unit of the Alabama National Guard is being created in the town of Butler and a storage building for the equipment is being erected on property belonging to the city of Butler.

"Please advise if the Court of County Commissioners is authorized under Section 181 and 182 of Title 35, 1940 Code of Alabama, to appropriate money to aid in the building for storing National Guard equipment on the property owned by the city of Butler."

I am of the opinion your question should be answered in the affirmative.

Title 35, Section 181, Code of Alabama 1940, provides, in pertinent part, as follows:

"The county commissioners, board of revenue, or other governing body in each county, and the city council and city commissioners or other

governing body of a municipality, are hereby authorized and empowered, at their discretion to appropriate . . . . monies for the purpose of furnishing by rental or purchase, armories, ... shelter for . . . . motor vehicles, artillery carriages and military equipment of every character, ..."

Section 181, supra, is very clear in providing that county and city governing bodies may appropriate funds for the purpose of making available to National Guard units certain facilities, among them being a shelter for storing equipment. Therefore, since each of the above units of government is authorized to furnish certain facilities, the appropriations of the two governing bodies may be combined in order to provide the needed facilities.

Hence, it is my opinion that a county governing body may appropriate money to aid in the construction of a building for storing Alabama National Guard equipment.—Biennial Report of Attorney General, 1934-36, page 250; Quarterly Report of Attorney General, Vol. 24, page 242. This is true although the said building is to be constructed on property owned by a municipality within the county.—Cf. Quarterly Report of Attorney General, Vol. 48, page 151; Quarterly Report of Attorney General, Vol. 59, page 106; Quarterly Report of Attorney General, Vol. 70, page 18.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General.
(Title 55, Section 239,
Code of Alabama 1940)

August 6, 1954

Hon. Joe M. Edwards
Commissioner of Revenue
State of Alabama
Montgomery, Alabama

Taxation—Licenses—Funds—Corporations.

The occupational license tax levied on foreign corporations by Act No. 527, General and Local Acts 1953, page 734 (Title 10, Section 191(1), 1953 Cumulative Pocket Part, Code of Alabama 1940), should be paid into the state general fund.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion bearing date of June 24, 1954, is as follows:

"Section 1 of Act No. 527, Regular Session 1953, approved Sepetmber 8, 1953, provides as follows:

"'Section 1. Any corporation which is not organized under the laws of this State and has no place of business in this State may maintain bank accounts, take and hold mortgages on real property located within the State, collect the debts secured thereby, and may appoint a custodian or agent to hold such securities, collect such debts, control such property, and enforce the provisions of such mortgages, without qualifying to do business in this State or without payment of taxes, except the taxes levied or assessed on such property. Provided, that any custodian or agent appointed under the provisions of this Act shall pay all applicable municipal license taxes and shall pay an occupational license tax to the State of one hundred dollars for the first year and five dollars annually thereafter. Such corporation may sue or be sued in this State in relation to such mortgages or real property, securities or debts, and service of process may be perfected by service upon any agent appointed by such corporation.'

"Your official opinion is requested concerning the following question:

"Upon receipt thereof from a custodian or agent of a foreign corporation duly appointed under the provisions of the above Act, into what fund should the occupational license tax be paid?"

It is apparent that Act No. 527, General and Local Acts 1953, page 734, does not specify into what fund the occupational license tax is to be paid, and I find no other provision of law as authority to pay this tax into any State special fund. The provisions of Title 51, Section 847, Code of Alabama 1940, as amended by Act No. 854, General and Local Acts 1951, page 1483, are not applicable since the license taxes referred to therein are taxes collected by the probate judge.

The tax provided for in Act No. 527, supra, is obviously a tax in lieu of the admission tax, permit fee, and franchise tax levied on foreign corporations by the provisions of Title 51, Sections 339-364, Code of Alabama 1940, the proceeds of which are paid into the State general fund.

In view of the fact that the provisions of Act No. 527, supra, do not designate any special fund into which the tax specified therein is to be paid, and since there are no other provisions of law, general or special, so designating, it is my opinion that the occupational license tax provided for in said Act should be paid into the State general fund.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General.
(Title 55, Section 239,
Code of Alabama 1940)

August 10, 1954

Hon. H. H. Weldon, Sr.
Judge of Probate and
Chairman of Commissioners Court
Wetumpka, Alabama

Jurors and Juries—Counties

A county is not authorized to make payment for shaves given jurors kept together overnight.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of March 3, 1953, is as follows:

"At the last term of the Circuit Court of Elmore County a Jury was held over night and through the next day on order of the Judge of the Court. During this time the Jurors were carried to the barber shop for shaves.

"There has been filed with the Commissioners Court a claim asking the Court to pay for these shaves. Please advise me if the Commissioners Court can legally pay this claim."

I find no authority of law which would make it the duty of the commissioners court to provide tonsorial service to jurors who have been kept together overnight. Your attention is directed to Title 30, Section 97, Code of Alabama 1940, which is as follows:

"Section 97. When kept together, jury provided with lodging and meals... Whenever a jury is, by order of the court, kept together without separation during any night, or for an unusual length of time, it is the duty of the sheriff, with the approval of the court, at the expense of the county, to provide for the jurors, and the bailiffs or deputy sheriffs in charge of, or attending, said jury, suitable lodging and meals."

This is the only statute authorizing payment by counties for services rendered to jurors during their tenure of service. It is a familiar principle that public funds cannot be expended unless there is express authority or authority necessarily implied.—**State, ex rel. Towle v. Stone**, 236 Ala. 82, 181 So. 281.

In the above quoted statute, no mention is made of jurors being entitled to shaves at the expense of the county. Thus, payment by the commissioners court for such services is not authorized.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General.
(Title 55, Section 239,
Code of Alabama 1940)

August 11, 1954

Hon. E. C. Laslie
Chairman, Board of Revenue
Macon County
Tuskegee, Alabama

Registers—Officers and Offices—Counties.

The register of a circuit court cannot be employed as a bookkeeper by the county governing body.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of June 9, 1954, is as follows:

"The Board of Revenue has as one of its employees a Bookkeeper whose salary is set by the Board, and his hiring and firing is done at discretion of the Board. The Board has in the past, and at present, hired as its bookkeeper the same person who is Register in Chancery of the Circuit Court of Macon County, in Equity, a position which is filled by the appointment of the Judges of the Court.

"The question has arisen as to whether or not the Register in Chancery may hold the position of bookkeeper under the provisions of Section 280 of the Alabama Constitution and Section 211 of Title 41 of the 1940 Code of Alabama. Your opinion as to whether or not the Register has authority to hold the position of bookkeeper would be appreciated."

In pertinent part, Title 41, Section 211, Code of Alabama 1940, reads as follows:

"Any judge of probate, tax collector, tax assessor, sheriff, clerk of the circuit court, solicitor, or county treasurer, members of the court of county commissioners or board of revenue, or any other state or county officer who takes any contract, for work or services of the county, or is employed in any way under such contract, or sells any goods or supplies to the county, or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must, on conviction, be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not exceeding twelve months; . . ." (Emphasis supplied.)

A contract prohibited by virtue of the provisions of this statute is void. **Pitts v. Chilton County**, 27 Ala. App. 364, 173 So. 94.

That a register of the circuit court is a county officer, there can be no doubt. A person who is appointed or elected to perform public functions with authority derived from the State by legislative enactment is a public

officer. Michael v. State ex rel. Welch, 163 Ala. 425, 50 So. 929; State ex rel. Glenn v. Wilkinson, 220 Ala. 172, 124 So. 211; Hard, State Comptroller v. State ex rel. Owen, 228 Ala. 241, 153 So. 725; Cf. Quarterly Report of Attorney General, Vol. 50, page 95.

For constitutional and statutory provisions relating to the appointment and duties of registers of circuit courts, see Constitution of Alabama 1901, Section 163, and Title 13, Sections 210 and 213, Code of Alabama 1940.

Premises considered, it is my opinion that, by virtue of the provisions of Section 211, supra, the register of the Circuit Court of Macon County cannot be employed by the Macon County Board of Revenue as its bookkeeper. Cf. Biennial Report of Attorney General, 1936-38, page 108.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 11, 1954

Hon. David E. Dunn
Judge of Probate
Montgomery County
Montgomery, Alabama

Filing Tax—Deeds—Mortgages—Opinions Overruled, Modified and Distinguished.

1. A contract or bond for title whereby vendor agrees to sell real estate and accepts part of purchase money in cash, takes notes for balance of purchase money, and agrees upon payment of all purchase money and compliance with other stipulations contained therein to convey title is subject to the deed filing tax as to amount paid in cash upon execution of agreement, and to mortgage filing tax as to unpaid purchase money under Title 51, Sections 618 and 619, Code of Alabama 1940, as amended by Acts Nos. 769 and 770, General and Local Acts 1953, pages 1029 and 1031, respectively.

2. Quarterly Report of Attorney General, Vol. 52, page 117, overruled.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion bearing date of June 11, 1954, is as follows:

"Mr. Jack Thorington, Attorney, proposes to file for record a Bond for Title, but questions the right of this office to charge tax on said instrument.

"We are enclosing letter from Mr. Thorington, also copy of Bond for Title in question. This office is of the opinion that on a Bond for Title there should be collected a deed tax on amount paid, and a mortgage tax on the balance due. We refer you, as we did Mr. Thorington, to an opinion rendered to Hon. W. W. Hill, Judge of Probate, December, 1938, also opinion rendered to Judge S. E. Boozer, July, 1942. The two above opinions cover, to our mind, the point in question, but Mr. Thorington does not accept our opinion. In order to settle this difference of opinion, we ask that you render this office an official opinion."

Generally speaking, a bond for title is a conditional contract for the sale of land whereby the vendor covenants to make title to the vendee upon payment of the purchase price. 3 Alabama Law Review 327. The copy of the bond for title attached to your inquiry contains the usual provisions found in such instruments. It is a contract to sell real estate, part of the consideration being paid in cash upon execution and the balance to be due in installments evidenced by promissory notes, the deed to be made upon full payment and compliance with other stipulations as to taxes, insurance, etc.

Title 51, Section 618, Code of Alabama 1940, as amended by Act No. 769, General and Local Acts 1953, page 1029, provides, in part, as follows:

"Section 618. Deeds, Bills of Sale, Etc.; Recordation.—No deed, bill of sale, or other instrument of like character which conveys any real or personal property within this state, or which conveys any interest in any such property, . . . shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record to-wit: . . ." (Emphasis added.)

Where, as in a bond for title, the vendor holds legal title to the real property as security for payment of the purchase price, and has agreed to give a deed upon such payment, the courts of this State follow the equitable maxim of treating that as done which ought to have been done, or which the parties contemplate shall be done, and for most purposes regard the contract as specifically executed, the vendee being the equitable owner of the land and the vendor being regarded as the holder of an equitable mortgage. To the land a trust attaches. Of it the vendor is seized for the use of the vendee. The trust binds the land, while the legal estate remains in the vendor; and it binds the heir or devisee succeeding to it, and every one claiming under the vendor, with the exception of a bona fide purchaser without notice. As land, the vendee may convey or devise it; and as land it is descendible to his heirs, who may, in a court of equity, compel a speci-

fic execution of the contract. If there is not a stipulation to the contrary, the contract of itself operates a transmutation to the vendee of the possession, entitling him to the right of entry and enjoyment. **Loventhal v. Home Insurance Co.**, 112 Ala. 108, 20 So. 419; **Wimbish v. The Montgomery Mutual Building and Loan Ass'n.**, 69 Ala. 575; **Reid v. Davis**, 4 Ala. 83. The relation of vendor to vendee in a bond for title agreement is precisely that of mortgagee to mortgagor. In the case of **Bankhead v. Owen**, 60 Ala. 457, the Court states:

> " . . . There can be no just and proper distinction drawn between a mortgage to secure the payment of the purchase-money, executed contemporaneously with the conveyance of the land, and a reservation of the legal estate, as a security for its payment. . . ."

In holding that a vendee of lands under an executory contract of purchase, holding a bond for title upon payment of the price, a portion of which has been paid, is an owner in fee simple within the condition of a policy providing that it shall be void if the subject of the insurance is a building on ground not owned by the insured in fee simple, the Court in the case of **Loventhal v. Home Insurance Co.**, supra, stated:

> " 'It is a well-settled rule that the vendor of real estate ,who has not executed a deed to the purchaser, holds the legal title as a security for the payment of the purchase money; and, if he executed a bond to make titles when the purchase money is paid, the contract, in a court of equity, will be considered in the nature of a conveyance to the purchaser and a reconveyance back by way of mortgage.' "

In view of the above authorities, it is apparent that under a bond for title some interest in the land passes at the time of the agreement. In the case of **Thompson, Probate Judge v. Smith**, 234 Ala. 409, 174 So. 797, the Court states as follows:

> "So that we think, when there is a contract of sale of real or personal property by which either the title is reserved in the vendor as security for the debt, or by which the title passes and what is known as a lien is reserved for that purpose, and such instrument is offered for record, there is due to be paid both the mortgage tax and the deed tax, . . .
> " . . . a conditional sale of real or personal property conveys an 'interest' in such property as is mentioned in Schedule 46, supra, whether that interest be legal or equitable. The purchaser is regarded as the beneficial owner, and that is an interest. . . .
>
> "It conveys an interest in personal property as the cases we have cited show, and is subject to a deed tax to the extent the purchase price was paid, and a mortgage tax to the extent it was deferred on the basis of the security."

As to the mortgage filing tax, Title 51, Section 619, Code of Alabama 1940, as amended by Act No. 770, General Acts 1953, page 1031, provides, in part, as follows:

"Section 619. Mortgages, deeds of trust, etc.; recordation.—No mort-

> gage, deed of trust, contract of conditional sale, or other instrument of like character which is given to secure the payment of any debt, which conveys any real or personal property situated within this state, or any interest therein, shall be received for record unless the following privilege or license taxes shall have been paid upon such instrument before the same shall be offered for record to-wit: . . . (e) . . . The tax herein provided for shall be paid upon all contracts for the sale of real or personal property, whether the same be in the nature of a conditional sale, or a bond for title, and no such contract shall be received for record until such tax shall have been paid. . . ." (Emphasis added.)

It is apparent that Section 619(e), supra, expressly includes a bond for title as an instrument subject to the mortgage filing tax upon recordation.

In view of the above, it is my opinion that when the instrument in question, which is a bond for title, is offered for record, there is due a deed tax on the amount of the purchase price paid in cash upon execution of the agreement, and a mortgage tax on the unpaid portion of the purchase price.

The last paragraph of the letter from Mr. Thorington to you dated June 9, 1954, is as follows:

> "I am making this request mainly in view of the opinion given to Judge W. W. Hill in the reports of Oct.-Dec. 1938, p. 109, as against the opinion rendered some 10 years later in the reports of July-Sept., 1948 at p. 117."

The opinion referred to in the report of October-December, 1938, is found in Quarterly Report of Attorney General, Vol. 13, page 109, and holds that a bond for title instrument is subject to the deed and mortgage filing tax, and the opinion referred to in the reports of July-September, 1948, is found in Quarterly Report of Attorney General, Vol. 52, page 117, and holds that a similar instrument is not subject to the deed and mortgage filing tax.

In reaching the conclusions as expressed in this opinion, the opinion of this office reported in Quarterly Report of Attorney General, Vol. 13, page 109, is hereby reaffirmed and the opinion of this office reported in Quarterly Report of Attorney General, Vol. 52, page 117, to the extent that it conflicts with this opinion, is hereby overruled.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 11, 1954

Hon. R. P. McRee, Administrator
Alabama Alcoholic Beverage Control Board
Montgomery 2, Alabama

Alabama Alcoholic Beverage Control Board—Act—Military Reservations—United States .

Manufacturers and distillers of alcoholic liquors, and their agents and salesmen, in making annual applications for licenses before the Alcoholic Beverage Control Board are not required to report expenses incurred in soliciting or making sales of such liquors directly to agencies or organizations on military installations for consumption thereon.

Opinion by Assistant Attorney General Sanders.

Dear Sir:

Your request for an official opinion bearing date of July 30, 1954, is as follows:

"We have received several inquiries from agents and/or representatives for various distillers and vintners, doing business in the State of Alabama, with reference to the reporting of expenses and salaries, as required by Act 298, General Acts of 1947.

"It will be appreciated very much if you will advise whether or not representatives calling on the State of Alabama, and also military installations located within the State, or adjacent to the State of Alabama, are required under the provisions of Act 298 to include all expenses incurred by them, or if they would be allowed to deduct the expenses incurred by them in soliciting the military installations."

Act No. 298, General Acts 1947, page 149 (Title 29, Sections 12(1)-(5), 1953 Cumulative Pocket Part, Code of Alabama 1940), provides for the obtaining of annual licenses by manufacturers, distillers, producers and distributors of alcoholic liquors, as well as their agents, brokers, salesmen and other persons engaged in selling alcoholic liquors or solicitating such sales, as a condition precedent to making sales to the Alabama Alcoholic Beverage Control Board. Pertinent portions of said Act are as follows:

"Section 1. (a) Any manufacturer, distiller, producer or distributor of alcoholic liquors, as a condition precedent to making sales to the Alcoholic Beverage Control Board must annually register with and secure a license from the Alcoholic Beverage Control Board . . . .

"Section 2. (a) Any agent, broker, salesman, or other person engaged in selling alcoholic liquors, soliciting sales of such liquors, or acting as broker for anyone selling such liquors, as a condition precedent to soliciting from, participating in making sales to, or making sales to

the Alcoholic Beverage Control Board must annually register with and secure a license from the Alcoholic Beverage Control Board . . ."

Such applications for licenses must, in each instance, include a sworn statement regarding the amount of expenses paid by each distiller and received by each salesman during the preceding twelve months. Relevant portions of the Act in this regard are as follows:

"Section 1 . . . . (b) Every application for a license must be accompanied by a sworn statement signed by an authorized officer or agent of the applicant showing: . . . 4) the amount of the expenses paid by applicant to each of its agents, salesman (sic), or representatives incident to each sale made to the Alabama Beverage Control Board where the same was paid by the sale, if not, then the monthly expenses paid to such agents, salesmen, or representatives during the preceding twelve months . . . .

"Section 2. . . . . (b) Every application for a license must be accompanied by a sworn statement of the applicant showing: . . . (4) the expenses incident to each sale paid to applicant if on a commission or fee basis, if on other than commission or fee basis, then the expenses paid each month to the applicant during the preceding year . . ."

The question you have posed is whether, in making the required annual statements, expenses incident to solicitation of, and sales made to, agencies or organizations on military installations for consumption thereon are to be included. In my opinion this question should be answered in the negative. The statutory language quoted above, as well as the title of the Act itself ("To provide for licensing manufacturers, distillers, producers, distributors of and persons selling, attempting to sell, or acting as a broker for persons selling alcoholic liquors to the Alabama Alcoholic Beverage Control Board"), shows that the requirements of licensing and reporting expenses incurred by the applicant are imposed only in connection with sales to the Alcoholic Beverage Control Board. The entire Act is predicated upon such sales. I have been informed, however, by the Administrator of said Board that sales to agencies or organizations on military installations for consumption thereon are made directly by the manufacturer or distiller to such groups and not to or through the Alabama Alcoholic Beverage Control Board.

It is my opinion, therefore, that sales made in such a manner are not subject to the requirement concerning the reporting of expenses here involved.

This conclusion is apparent from the wording of the statute in regard to agents or salesmen who are employed on a commission or fee basis, inasmuch as in such case expenses, just like commissions, are paid in connection with each sale, and only those incident to sales made to the Board must be reported. On the other hand, if the agent or salesman receives his compensation in the form of a salary, the statute requires him to report his expenses for the preceding twelve months. Therefore, in order to con-

strue this requirement in parallel fashion and in the light of the statute's purpose as revealed by its title, it must be interpreted to mean that such statement of expenses is to include only those incurred during that period which may properly be allocated to sales made to the Alcoholic Beverage Control Board. The method of allocation or apportionment of such expenses is, of course, a problem for the individual distillers and salesmen concerned.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 13, 1954

Hon. G. A. Mosley, Sheriff
Montgomery County
Montgomery 2, Alabama

Clerks of Inferior Courts—Executions—Costs and Fees.

1. The clerk of the Court of Common Pleas of Montgomery County cannot refuse to accept an execution returned without action by order of the plaintiff or his attorney, even though court costs are not paid.

2. The owner of a judgment has full authority to control the execution of process, even if it has been placed in the hands of the sheriff, including the right to order the suspension or complete withdrawal of the writ.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of July 8, 1954, is as follows:

"Re: Judgment Executions.

"I am requesting an official opinion from your office in regard to returning Judgment Executions to a court by instructions of a plaintiff's attorney, before the court cost is paid.

"The Clerk of the Common Pleas court of this County refuses to accept a Judgment execution from the sheriff office before the court cost has been paid, when so instructed by the plaintiff's attorney, to be returned. In other words, the Judgment and Cost has been paid direct

to the plaintiff's attorney, and he in turn, instructs this office to return said execution back to the court by his orders.

"Will you be kind enough to advise me whether the Clerk has the legal right to refuse accepting an execution from the sheriff before the court cost is paid, when he is instructed by the attorney to return said execution?

"Expediting of this request will be highly appreciated."

As I understand your request, you have unsuccessfully attempted to return to the clerk of the Court of Common Pleas an execution before court costs have been paid and with the return notation to the following effect: "Returned without action by order of plaintiff's attorney." It is upon this hypothesis that my opinion is submitted.

The correct solution of the problem will require some consideration of the established law as it relates to judgments and the execution thereof.

In Judge Freeman's work, "Freeman on Executions," Third Edition, pages 58-59, Section 21, the following appears:

"As the judgment is the property of the plaintiff, he alone, while the property remains his, is entitled to exercise dominion over it. As a writ of execution is the only means by which the property can be made productive, the owner of the property is necessarily the person entitled to call for the writ; to withhold the writ from him is in effect to withhold from him the beneficial enjoyment of his property; and to allow another to call for or to control the writ is to turn the dominion of property over to one who has no right thereto. Of course, ownership over judgment, like ownership over all other kinds of property, may be exercised in person or by duly constituted agents. But as the plaintiff is the only person entitled to the fruits of the judgment, no execution can properly issue except at his instance or that of his attorney or agent."

Further, it seems to be established that the successful plaintiff not only controls the issuance of a writ, but also may direct the execution of the writ, and may even direct that it be held until further orders, or may even order the withdrawal of the writ altogether. 21 Am. Jur., Executions, Sections 80, 96; 33 C. J. S., Executions, Section 90.

In Patton v. Hamner, 28 Ala. 618, 622, our Supreme Court spelled out the authority of a plaintiff over actions of a sheriff in the disposition of a writ of execution. In this case, the court concluded that the plaintiff in the execution has the right to control his own process, and while the duty is upon the sheriff to effectuate the mandate of the process, still he cannot do so where such effectuation has been forbidden by the plaintiff or his attorney.

From the foregoing, it is apparent that, upon the question of whether or not a writ of execution will be issued or carried into effect, the authority of the plaintiff or his attorney is conclusive. Quarterly Report of Attorney

General, Vol. 25, page 84; Quarterly Report of Attorney General, Vol. 29, page 78; Quarterly Report of Attorney General, Vol. 53, page 116.

I now turn to the specific question which your letter has posed. The action of the clerk which you question is, in effect, a challenge to the legal sufficiency of a return notation stating that the process has been returned without action by order of the plaintiff or his attorney. I do not know of any other notation which would be appropriate where the execution of the process has been forbidden by the plaintiff in execution or his attorney.

Perhaps a consideration of the legal status of a "return" is warranted. The return of a writ of execution, or of any other writ, is simply an account, in writing, made by the sheriff or other ministerial officer, of the manner in which he has executed the writ. That is, a return is merely a certificate of the officer, to whom any process is directed, stating what he has done in obedience to the commands therein given. This may be a statement that the commands of the process have been executed or it may state the reasons why such commands have not been executed. In "Herman on Executions," page 381, it is observed that the notation "stopped by order of the plaintiff" constitutes a sufficient return. This notation, it seems to me, is a legal equivalent of the return notation made by you on the execution which the clerk refused to accept. From "Freeman on Executions," pages 2028, 2029, Section 356, it is apparent that an instruction by a plaintiff or his attorney that the writ of execution shall not be executed constitutes sufficient legal excuse for the failure of the sheriff to execute the writ. And the notation of such instruction, therefore, constitutes a sufficient return.

From the foregoing, I conclude that the clerk of the Court of Common Pleas cannot legally refuse to accept a return of execution where the return shows that the operation of the return has been suspended or prohibited by the plaintiff in execution or his attorney. Furthermore, no statutes have been discovered which would in any way alter the conclusions stated above.

It is appropriate to examine the problem confronting the clerk causing him to refuse the return. From the facts suggested by your letter, the plaintiff has collected both the principal of his judgment and costs, and has ordered the return of execution without any action being taken thereon. And it is the uncertainty of payment of court costs to him which apparently prompts the clerk to refuse to accept a return unaccompanied by such costs.

However, the clerk's problem of collecting his fee and other costs is not so hopeless as it might first appear. One possible solution of his problem is suggested in Quarterly Report of Attorney General, Vol. 25, page 84, at page 89. The defendant has not discharged his liability for court costs simply because he gave the plaintiff money for the payment of such costs. Until satisfied with the proper authority, the trial tax and clerk's fees for services performed at the instance of defendant constitute an indebted

ness for the satisfaction of which the county and the clerk, respectively, can maintain an action of assumpsit. Also, an action for moneys had and received might be maintained by the clerk and the county against the plaintiff for their respective shares of the money collected by him.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 18, 1954

Hon. Bert E. Thomas
Tax Assessor
Mobile County
Mobile, Alabama

Tax Assessors—Exemptions—Municipalities—Taxation.

In making assessment for municipal taxes under the optional system of assessing and collecting such taxes as prescribed by Title 37, Sections 698-732, Code of Alabama 1940, the tax assessor of the county should apply to municipal taxes the statutory exemptions authorized and properly claimed under the provisions of Title 51, Code of Alabama 1940, other than the exemption relating to homesteads provided for by Section 15 of said Title 51.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of July 20, 1954, is as follows:

"The County of Mobile is authorized to use its machinery for the assessment and collection of the municipal taxes of the City of Mobile in accordance with Article 2, Title 37 of the 1940 Code of Alabama as amended.

"Please advise me if I am authorized to apply to municipal taxes statutory exemptions authorized and properly claimed under the provision of Title 51, Code of Alabama 1940."

My answer to your inquiry is in the affirmative with respect to all of the statutory exemptions found in Title 51, Code of Alabama 1940, other than the exemption of homesteads provided for by Section 15 of Title 51, supra. This last named exemption has application only to state ad valorem

taxes and, hence, would have no application to municipal taxes upon such property.

The conclusion expressed above is based on a study and consideration of the exempting statutes found in Title 51, supra, together with those statutes governing the assessment and collection of municipal taxes by the tax officials of the county, namely, the tax assessor and tax collector.

Referring, first, to those statutes authorizing exemption from taxation as found in Title 51, Sections 2-16, Code of Alabama 1940 (certain sections of which have been amended), it is to be noted that all of such statutes, other than Section 15 thereof, having reference to exemption of homesteads, specifically provide that the property and persons therein described shall be exempt from "ad valorem taxation" or from "all state, county and municipal taxes and licenses," either of such terms including exemption from all state, county, and municipal ad valorem taxation.

Considering next the provisions of Title 37, Sections 698-732, Code of Alabama 1940 (Section 732 having been amended), having to do with an optional method of collecting municipal taxes and providing that such taxes may be assessed and collected by the tax officials of the county, it is to be noted that Section 701 thereof provides that:

> "The tax collector of the counties in which such municipalities are situated shall collect all property taxes for such municipalities at the same time and in the same manner and under the same laws that state and county taxes are collected."

Section 722 of the above cited statutes provides, with reference to the tax assessor, that:

> "The county tax assessor shall calculate and enter municipal taxes owing to such municipalities on the descriptive lists coming to him under and in accordance with the provisions of law in regard to state and county taxes, in the same manner and way that he is required to do as to state and county taxes, and all provisions, proceedings, and requirements as to state and county taxes shall be applicable to such municipal taxes."

Lastly, it is provided, with reference to the collection of such taxes, by Section 730, supra, that:

> "All laws now in force or hereafter enacted in regard to the collection of state and county taxes and procedure, with reference thereto, and the enforcement of collection shall apply to and be in force as to such municipal taxes, except as such laws are changed by or in conflict with the provisions of this article and the county tax collector shall collect or enforce the collection of such municipal taxes at the same time, in the same manner and way, and as a part of one and the same collection as the collection of state and county taxes and all procedure incident to or in any wise connected with the collection of state and county taxes shall be equally applicable to the collection of said munici-

pal taxes and all such municipal taxes shall be collected in the same way and in the same proceedings as state and county taxes."

In view of the above cited statutes, I am of the opinion that, in making assessment for municipal taxes under the prescribed system and machinery established by law, you should apply to such municipal taxes the statutory exemptions authorized and properly claimed under the provisions of Title 51, supra, other than the exemption relating to homesteads provided for by Section 15 of Title 51, supra.

Although perhaps unnecessary, I would mention that application for the industrial exemption authorized by Section 3 of Title 51, supra, must be made to the governing body of the municipality concerned in the manner prescribed by Section 4 of such Title, and not to your office.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 18, 1954

Hon. H. Harrison Hill
Clerk, Circuit Court
Morgan County
Decatur, Alabama

Clerks of County Courts—Clerks of Circuit Courts—Costs and Fees—Morgan County—Words and Phrases.

The ex officio clerk of the Morgan County Court is not entitled to a five percent allowance on monies collected for and remitted to the State or County.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of July 30, 1954, is as follows:

"Section 22 of Title 11 of the Code of Alabama of 1940 provides that the clerks and registers of the several Circuit Courts of the State of Alabama shall receive five per cent of sums collected by them for the State of Alabama as compensation for the collection and remittance of same. Subdivision (16) of Section 198 of Title 13 of the Code of Alabama provides that the clerk of the Circuit Court is entitled to five per cent of

the money collected for the County as compensation for collecting the same.

"Under the provisions of Section 9 of the Local Act of the Legislature approved July 7, 1947 (Local Acts 1947, page 46), the clerk of the Circuit Court of Morgan County, Alabama is ex officio clerk of the Morgan County Court, and is to receive the same fees allowed the Circuit clerks. Section 17 of the Local Act provides that all laws pertaining to costs and fees in the Circuit Court shall be applicable to the County Court. Section 9 of the Local Act, hereinabove mentioned, provides that the clerk of the Morgan County Court shall be entitled to the same fees allowed to clerks of the Circuit Court, to be collected as such fees are collected in the Circuit Court.

"From time to time, I, as ex officio clerk of the Morgan County Court, collect monies due the State of Alabama and Morgan County, and I respectfully request your opinion as to whether I am entitled to the five per cent of such monies as compensation for collecting and remitting the same for the State and County respectively. See in this connection State, for the **Use and Benefit of Morgan County v. Norwood**, 248 Ala. 128, 26 So. 2d 577."

It is my opinion that your question should be answered in the negative.

The statutory provisions to which you refer in your request are as follows:

Title 11, Section 22, Code of Alabama 1940:

"The clerks and registers of the several circuit courts of the State of Alabama shall receive five **percent** of any sum or sums collected by such clerk or register for the State of Alabama, **as compensation** for the collection and remittance of the same, the said percentage to be deducted by such clerk or register making the collection from such sum or sums collected." (Emphasis supplied.)

Title 13, Section 198, Code of Alabama 1940, as amended by Act No. 617, General Acts 1947, page 465:

"It is the duty of the clerk of the circuit court: . . . (16) To render to the county treasurer, court of county commissioners, or board of revenue, as of December thirty-first and June thirtieth of each year, a statement in writing and under oath, of the fines assessed and forfeitures obtained during the preceding six months, the amount of each, and against whom each was assessed or obtained, and also what money they have received for the county, specifying from whom, on what account, and the amount in each case; and, after deducting from such amount **five per cent for their compensation**, they must pay the balance to whomsoever is custodian of the county funds." (Emphasis supplied.)

Act No. 66, Section 9, Local Acts 1947, page 46:

"That the Clerk of the Circuit Court of Morgan County shall be ex

officio clerk of said (Morgan County) court and shall have the powers, and discharge the duties which will devolve upon the clerk of the circuit court, except in equity cases, and shall be subject to the same pains and penalties with regard to the duties of the office, and **shall be entitled to the same fees as are now, or may hereafter, be allowed to circuit clerks of Alabama,** and the same shall be collected as such fees are collected in the circuit court, and the Deputy Clerk of the Circuit Court of Morgan County shall be ex officio Deputy Clerk of the Morgan County Court, and exercise the same powers and duties as are exercised in the circuit court by such deputy clerks. The Register of the Circuit Court of Morgan County shall be ex officio Register of the Morgan County Court and as such ex officio register shall have the same powers and discharge the same duties which devolve upon the register of the circuit Court, and shall be subject to the same pains and penalties with regard to the duties of the office, and shall be entitled to the same fees as are now or may hereafter be allowed registers of the circuit court, and the same shall be collected as such fees are collected in the circuit court." (Emphasis and parenthetical matter supplied.)

Act No. 66, Section 17, Local Acts 1947, page 46:

"All laws pertaining to **costs and fees** in cases in the circuit court, and criminal cases in the county court, as provided by the general laws of this state, shall be applicable to said court, except as herein otherwise provided. A trial tax of Two Dollars is imposed in each case, criminal and civil, both at law and in equity which is docketed in said court to be taxed and collected as other costs in said court, and when collected to be paid into the county treasury for the benefit of the general fund." (Emphasis supplied.)

It appears that Section 22, supra, and subsection 16 of Section 198, as amended, supra, allow the circuit clerks, **as compensation,** five percent of any monies collected for the State or county. This office has held, in construing the provisions of Section 22, supra, that this five percent compensation is an "allowance."—Quarterly Report of Attorney General, Vol. 20, page 284. Because of the similarity in phraseology, it is my opinion that the five percent designated in subsection 16 of Section 198, as amended, supra, must also be considered an allowance.

The provisions of Section 9 of Act No. 6, supra, have reference to "fees." In Quarterly Report of Attorney General, Vol. 20, page 284, this office held that the term "fees" did not include "allowances"; and the fact that a circuit clerk, in his capacity as ex officio clerk of an inferior court, is to be allowed the same fees as circuit clerks, did not have the effect of granting to him the five percent allowance on monies collected for the State as specified in Section 22, supra.

It is my opinion, upon a consideration of the authorities hereinabove cited, that the principles set out in the foregoing paragraph apply to the five precent allowance on monies collected for the county, as specified in

subsection 16 of Section 198, as amended, supra; therefore, the ex officio clerk of the county court would not be entitled to the said allowance.

The provisions of Section 17 of Act No. 66, supra, are restricted to the laws applicable to costs and fees and would have no effect upon the five percent allowances provided in Section 22, supra, and subsection 16 of Section 198, as amended, supra. The term "costs and fees" does not include "allowances." Quarterly Report of Attorney General, Vol. 48, page 39.

Your attention is directed to **Purifoy, Auditor v. Godfrey,** 105 Ala. 142, 16 So. 701, and **Stone, Treasurer v. State, ex rel. Holcombe,** 197 Ala. 293, 75 So. 536. These two cases are cited in the opinions, to which reference is hereinabove made, as authority for the conclusions reached in said opinions.

The case cited in your request, **State, for Use and Benefit of Morgan County v. Norwood, et al.,** 248 Ala. 128, 26 So. 2d 577, involves the question of whether a sheriff acting in lieu of a constable may be paid his fee from the insolvent cost fund of a justice of the peace. It is my conclusion that the rationale of that case has no application whatsoever to the instant question.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 18, 1954

Hon. J. H. Garrett, President
Board of Revenue
Cherokee County
Centre, Alabama

Condemnation—Rights of Way—Roads and Bridges—Witnesses.

1. Property owners or the condemnors in a condemnation proceeding have the right to a hearing before the commissioners appointed in such proceeding.

2. Inasmuch as the Code is silent as to the procedure to be followed in conducting the hearing, the same is to be conducted by the commissioners.

3. Witnesses who appear at hearings conducted by the commissioners in a condemnation proceeding are not entitled to witness fees.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of February 12, 1954, is as follows:

> "Recently Cherokee County Board of Revenue filed application with the Probate Court for Order of Condemnation for condemning certain property for the purpose of constructing a public road. The Probate Judge notified the property owners and set the date for the hearing. The hearing was duly held and the property owner was represented by Counsel. The application was granted and the commissioners appointed, at this point counsel for the property owner asked for a hearing in order that he might bring witnesses before the commissioners, prior to the assessment by the commissioners, and offer evidence as to the value of the land condemned and/or damage to the remaining property.
>
> "Our questions are (1) Does the counsel or property owner have a legal right to this hearing. (2) Does the commissioners have a legal right to this hearing. (3) In either case if the hearing is held who conducts the hearing. (4) In case the hearing is held and witnesses are called, who pays the witnesses."

In answer to your first and second inquiries, your attention is invited to Title 19, Section 13, Code of Alabama 1940, which sets out the duties of the commissioners in condemnation proceedings and provides as follows:

> "The commissioners thus appointed, or a majority of them, shall assess separately the damages and compensation to which the several owners and other parties interested in each of the several tracts of land are entitled, and they shall be sworn as jurors are sworn. The commissioners may view the lands to be subjected, and must receive all legal evidence offered by any party touching the amount of damages the owners of the lands and other parties interested therein will sustain and the amount of compensation they are entitled to receive."

It is my opinion that the requirement in Section 19, supra, that the commissioners "receive all legal evidence offered" would, in effect, necessitate the holding of a hearing, if such hearing is requested by an interested property owner or the condemnor in order that evidence could be offered through the testimony of a witness or witnesses. This position is bolstered by Title 19, Section 15, Code of Alabama 1940, which provides that an interested party or parties may be present in person or by attorney at such proceedings.

There is nothing in the Code to suggest the procedure to be followed in conducting the above hearings. Hence, in answer to your third inquiry, it is my opinion that the hearings would be conducted by the commissioners.

There is also no provision in the Code for the payment of witnesses who appear at a hearing conducted by the commissioners. Therefore, in

answer to your fourth inquiry, I am of the opinion that such witnesses would not be entitled to witness fees. Such a hearing is not a civil case within the purview of Title 11, Section 44, Code of Alabama 1940. Cf. Quarterly Report of Attorney General, Vol. 70, page 29.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 19, 1954

Hon. W. B. Wise
Tax Assessor
Coffee County
Elba, Alabama

Schools—Municipalities—Taxation.

A city having a board of education must be designated an independent school tax district.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of April 1, 1954, is as follows:

"I am sending you a copy of Resolution passed by the City Council of the City of Elba, Alabama, on April 6th 1953. The change was from the County System to a City system, now while they were under county system the City of Elba was in school district #1 which included all of Coffee County except the City of Enterprise.

"Question: Is it legal for me to keep them in district one, or must I set up a new district for them?"

It is assumed that the inquiry you make is relative to the division of your county into school tax districts for purposes of taxation under the provisions of Title 52, Sections 254, et seq., Code of Alabama 1940.

In my opinion, the city of Elba must constitute a new and separate school tax district and it would be illegal to continue to include the city of Elba in the same school district with other parts of the county.

Title 52, Section 263, Code of Alabama 1940, appears to be a clear declaration upon the subject of your inquiry. It provides in part as follows:

"Any city having a city board of education shall constitute an inde-

pendent school tax district for purposes of levying the tax authorized under this article, . . ."

Title 52, Section 273, Code of Alabama 1940, provides that the schools in a municipality of 2,500 or more may remain under the control of a county board by agreement between that board and the city council of the municipality. This, however, has no application to your situation as I interpret your request.

Thus, in my opinion, it is incumbent upon you to set up a separate school tax district composed of the city of Elba.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 20, 1954

Hon. J. M. McLeod
Judge of Probate
Wilcox County
Camden, Alabama

Counties—Eminent Domain—Condemnation—Roads and Bridges.

1. A county may condemn material pits on a per yard basis.

2. Compensation for materials to be used for building roads must be made before such materials are taken by condemnation.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of May 1, 1954, is as follows:

"Re: Condemnation of Material Pits for use of Public Highway.
"Wilcox County is in the process of condemnation proceedings involving Material Pits for use on public highways.

"The usual method of securing material is on a royalty basis at an agreed price per cubic yard. The amount of payment determined by the actual amount of material removed from the property.

"The exact amount of material needed and the exact area needed to secure this material cannot be determined prior to removal of said material.

"(1) Is it legal to condemn Material Pits on a royalty basis and if so how would the amount of the Bond be determined?

"(2) Could this material be removed from the property prior to payment for same?

"(3) If opinion on above is adverse and Pits are condemned on an acreage basis would the County retain title after completion of the specific project for which condemnation proceedings were completed."

As I understand your first question, you request my opinion as to whether or not your county can legally condemn material to be taken from land and used in the construction of a highway without condemning the entire property rights in such land. In other words, you want to know whether or not you can legally condemn a given number of yards of gravel, top soil, or other material. It is upon this understanding of your request that the following opinion is submitted.

You can legally condemn a certain number of cubic yards of material, provided you specify in your application for condemnation the particular area from which the material is to be taken and the type of material to be taken.

Title 12, Section 198, Code of Alabama 1940, specifically authorizes the several counties to acquire by purchase or condemnation land or materials necessary or essential in the construction or maintenance of highways. Title 23, Section 26, Code of Alabama 1940, gives the State the same authority.

Title 19, Section 1, Code of Alabama 1940, declares the ways and means by which condemnation proceedings are carried out. This statute clearly demonstrates that those bodies authorized to exercise the power of eminent domain and thereby take private property for public use are empowered to take not only land itself, but also any interest or easement in land.

The above statutes, in my opinion, clearly authorize a county to condemn material, provided the area from which the material is to be taken and the type of material to be so taken is specified in the application for condemnation. The precise issue raised by your first inquiry seems to have been considered and put to rest by the decision in **Blanton v. Fagerstrom,** 249 Ala. 485, 31 So. 2d 330, 172 A. L. R. 128.

In your request you say that the exact amount of material needed and the area necessary to secure that amount cannot be determined. It is suggested that a qualified civil engineer can compute the approximate amount of material necessary for the construction of a given highway project and can further determine the approximate surface area in a given locale necessary to supply the requisite material. If it should result that the original estimate of necessary material is inadequate, further condemnation proceedings could supply the deficiency. However, it should be emphasized that the application for condemnation must specifically describe the area from which the material is to be taken and the type of material to be taken. See **Nashville, C. & St. L. Ry. v. Hobbs,** 120 Ala. 600, 24 So. 933; **London v. Sample Lumber Co.,** 91 Ala. 606, 8 So. 281.

In addition to the question treated by the foregoing, your first inquiry

also seeks advice relative to the fixing of a bond in the situation heretofore approved by this opinion. This latter inquiry, of course, presupposed that an appeal will be taken from the judgment of condemnation.

It is my opinion that the bond would be fixed in the same manner as in any other condemnation proceedings. Upon the approval of a proper application for condemnation the probate judge would appoint commissioners pursuant to Title 19, Section 11, et seq., Code of Alabama 1940. These commissioners would fix the compensation and damages to be paid to the landowner from which the material is to be taken. Of course, it would be competent for the commissioners to consider, in connection with other legal evidence, not only the value of the material taken but also the injury, if any, resulting to the remaining lands of the affected landowner. **Stout v. Limestone County,** 211 Ala. 227, 229, 100 So. 352; **Jones v. New Orleans, etc. Railroad Co.,** 70 Ala. 227. If an appeal is taken from the order of condemnation, then it will become necessary for the party seeking the condemnation to file a bond, if an immediate right of entry is desired. If the immediate right of entry is desired, the question you present relative to the fixing of a bond will then be appropriate. Title 19, Section 18, Code of Alabama 1940, as amended by Act No. 758, General and Local Acts 1953, page 1020, fixes the method by which the amount of bond is to be computed. The bond shall be for a sum in double the amount fixed as damages by the commissioners.

The answer to your second inquiry can be briefly stated. The Constitution of Alabama 1901, Section 235, specifically provides that when private property is taken, injured, or destroyed for public use, "compensation shall be paid before such taking, injury, or destruction." Therefore, the answer to your second query is in the negative. Compensation must be made to the landowner (or paid into court) before the property is taken. In this connection, see **Opinion of the Justices,** 259 Ala. 524, 67 So. 2d 417.

In view of the opinion rendered with regard to your Questions 1 and 2, I deem it unnecessary to answer your third inquiry.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 20, 1954

Hon. Bradley Brown, Director
Department of Revenue
Jefferson County
Birmingham, Alabama

Taxation—Schools—Municipalities — Motor Vehicles — Jefferson County.

1. The "law day" for state and county taxes in Alabama is

October 1, or the first day of the tax year, and such taxes are due and payable on the following October 1. at the end of the tax year.

2. The "law day" for City of Birmingham taxes is October 1, or the first day of the tax year, but said taxes become due and payable at the time state and county taxes for the preceding year are due and payable, or are payable in advance.

3. The five mill school tax levied under Amendment LXXXII to the State Constitution is a county tax and is to be assessed and collected in the same manner as state and other county taxes are to be assessed and collected.

4. The overall tax rate for the Huffman area of Jefferson County, Alabama, which was unincorporated until it became a part of the City of Birmingham as of May 19, 1954, will be $4.10 per $100 of taxable property on October 1, 1954. The regu lar overall rate of $3.60 per $100 of taxable property, plus the 50c per $100 county school tax, will apply to said area on that date, under the unusual circumstances which are here presented.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of July 21, 1954, is as follows:

"There is a difference of opinion as to the amount of tax we should assess and collect beginning October 1st of this year on motor vehicles domiciled in the Huffman area, which was annexed to the City of Birmingham on May 18, 1954.

"You are, of course, familiar with the 65c state tax and the $1.15 county tax, making a total of $1.80 state and county tax, and the City of Birmingham levies a $1.50 general fund tax plus a 30c school fund tax, making a total of $1.80 for Birmingham, the total for state, county and city being $3.60. Beginning October 1st of this year another 50c school tax will be added, which was voted on by the people of this county November 20, 1950, applicable to areas not then levying a five mill tax for schools.

"Inasmuch as this annexed area of Huffman was within the classification for which this additional 50c tax would be added this fall, and as municipal taxes are collected in advance and state and county taxes in arrears, would we assess and collect a total of $3.60 taxes in the aforementioned area, or should we collect $4.10?

"For your information I am attaching supporting information and citations on this question, trusting it will assist you in rendering me an official opinion at your earliest possible convenience as we are in the

process of preparing our tax schedules for October 1st, which is getting very close at hand."

Your inquiry appears to be confined to whether or not the taxpayers in what was formerly the Huffman area of Jefferson County, Alabama, will have to pay on October 1, 1954, the five mill county school tax levied under Amendment LXXXII of the State Constitution in addition to the regular tax rate of $3.60 per $100 of taxable property which is levied for state, county, and city taxes within the corporate limits of the City of Birmingham. In other words, you ask whether the tax rate applicable to the taxpayers within the Huffman area on October 1, 1954, will be the regular $3.60 rate levied within the City of Birmingham, or will it include the county five mill school tax and aggregate $4.10.

In my opinion your question will have to be answered in the affirmative; that is, the overall rate will be $4.10 on October 1, 1954, for the Huffman area.

What was formerly known as the Huffman area of Jefferson County, Alabama, was an unincorporated area located in said county until it was recently annexed and made a part of the City of Birmingham. This took place by an election which was held by the electors of said area on May 18, 1954, under the provisions of Title 37, Section 135, Code of Alabama 1940, and by an order of the Judge of Probate of Jeffrson County, Alabama, entered on May 19, 1954, as a result of said election. As a consequence thereof, the corporate limits of the City of Birmingham were extended on May 19, 1954, to include the Huffman area, and such area under the authority contained in subsection 7 of Section 135, supra, became a part of the City of Birmingham from and after May 19, 1954.

The county five mill school tax under consideration is levied in Jefferson County, Alabama, under the constitutional amendment proposed by Act No. 459, General and Local Acts 1949, page 665. This amendment was proclaimed ratified on November 20, 1950 (Proclamation Record, Volume H, page 108), and is now Amendment No. LXXXII to the State Constitution. It reads in pertinent part as follows:

"Jefferson county shall have the power to levy and collect an additional tax of 50 cents on each $100 of taxable property therein for public school purposes in the same manner and subject to the same election requirements as are now provided in the third amendment to this Constitution with respect to county school taxes; provided that in any incorporated municipality where special or additional taxes are being levied and collected for public school purposes, including the servicing of debts incurred for public schools, the additional tax herein provided for shall be reduced by the amount of such special or additional municipal public school taxes in the corporate limits where such special or additional municipal public school taxes are being levied and collected and during the time such taxes are levied and collected; . . ."

The amendment, therefore, provides that the additional school tax shall

be levied and collected in the same manner as is provided in Amendment III to the Constitution of 1901. It has been clearly held that taxes levied under Amendment III to the Constitution shall be collected in the same manner as other state and county taxes are levied and collected. **Pittman v. Johnson,** 237 Ala. 64, 185 So. 753; **Hamilton v. Pullman Corp.,** 231 Ala. 7, 163 So. 329.

In this regard, Title 52, Section 270, Code of Alabama 1940, also reads in material part as follows:

> "Whenever such a levy as is provided for in this article (three mill school taxes) is made, it shall be the duty of the tax collector within and for said county to collect such tax in the same manner and under the same requirements and laws as the taxes of the state are collected, ..."

The foregoing being considered, then the said Jefferson County five mill school tax is to be levied and collected in the same way as state and other county taxes are to be levied and collected.

State and county ad valorem taxes, including said county five mill school tax, are assessed and become fixed as of October 1, which is the first day of each ad valorem tax year, and is known as the "law day." Title 51, Sections 37-39, and 884, Code of Alabama 1940 (certain sections of which have been amended); **United States v. State of Alabama,** 313 U. S. 274, 61 S. Ct. 1011; **International Paper Company v. Curry,** 243 Ala. 228, 9 So. 2d 8; Quarterly Report of Attorney General, Volume 19, pages 167, 169; Biennial Report of Attorney General, 1934-1936, page 565. And where property is held or owned in the county involved by a taxpayer at the beginning of the tax year and on October 1, or the "law day," the assessment against said taxpayer and said property becomes fixed and certain for the entire tax year, and the amount of the taxes to be paid under said assessment also become fixed and certain (except for certain questions of valuation which could arise, but are not involved here), and cannot thereafter be released or diminished or the debt thereof extinguished except by the payment of such taxes. This rule also holds true as to municipal taxes. Section 100 of the Constitution of 1901; **State v. Alabama Educational Foundation,** 231 Ala. 11, 163 So. 527; **United States v. State of Alabama,** supra; Quarterly Report of Attorney General, Volume 60, page 83; Quarterly Report of Attorney General, Volume 12, page 24; Biennial Report of Attorney General, 1936-1938, pages 175, 177.

Therefore, for the current tax year, namely, October 1, 1953, through September 30, 1954, the "law day" for the assessment of state and county taxes, and the date that such taxes become fixed and the lien for said taxes attached, was October 1, 1953. Such taxes are due and payable at the end of the current year, or in this case, on October 1, 1954. Title 51, Sections 23, 37-39, and 884, Code of Alabama 1940 (certain sections of which have been amended); **Johnson v. State,** 245 Ala. 499, 17 So. 2d 662; **United States v. State of Alabama,** supra.

City of Birmingham ad valorem taxes also become fixed and are as-

sessed as of October 1, or the first day of the tax year, and said date is also the "law day" for said city taxes. City of Birmingham taxes, however, become due and payable at the time that state and county taxes for the preceding year are due and payable. Ordinance No. 1061-F of the City of Birmingham, adopted May 11, 1954; Title 37, Sections 700, 705, 706, Code of Alabama 1940; **Johnson v. State,** supra.

In other words, while the "law day" for Birmingham city taxes for the current year was October 1, 1953, the taxes for that year also became due and payable on that day. This is not the case as to state and county taxes for while such taxes were fixed and assessed on October 1, 1953, they will not become due and payable until the end of the current year, or until October 1, 1954.

It then follows that City of Birmingham taxes are paid in advance, or at the beginning of a current tax year, while state and county taxes are paid in arrears, or after the close of the taxable year. **Johnson v. State,** supra.

The ad valorem taxes normally levied within the corporate limits of the City of Birmingham are the 65c state tax and the $1.15 county tax, which makes an aggregate of $1.80 state and county taxes; and the City of Birmingham, a General Fund tax of $1.50, plus a 30c school tax, which makes a total of $1.80 for the City, and an overall tax rate of $3.60 per $100 of taxable property.

On October 1, 1953, the Huffman area was still an unincorporated part of Jefferson County and had not become a part of the City of Birmingham, and on that date and under the authorities heretofore cited, the 65c state tax, as well as the regular county tax of $1.15, plus the additional school tax of 50c per $100 of taxable property became fixed and certain on all items of real or personal property subject to taxation and held or owned by the taxpayers in that area of Jefferson County. And on October 1, 1954, these taxes in the total amount of $2.30 per $100 of taxable property become due and payable.

As the Huffman area became a part of the City of Birmingham on May 19, 1954, the regular city taxes totalling $1.80 per $100 of taxable property will be assessed and become fixed as of October 1, 1954, for the tax year commencing October 1, 1954, and ending September 30, 1955. Also on October 1, 1954, said taxes for said tax year become due and payable as said city taxes are payable in advance. Ordinance No. 1061-F of the City of Birmingham, supra.

Therefore, the overall tax rate for the Huffman area on October 1, 1954, will be $4.10 per $100 of taxable property. Of course, this will apply only on October 1, 1954, because of said unusual circumstances, for on October 1, 1955, and thereafter the regular rate of $3.60 per $100 of taxable property levied within the City of Birmingham will apply to the Huff-

man area, barring any unforeseen changes which may be subsequently made by law.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 26, 1954

Hon. Ralph B. Draughon, President
Alabama Polytechnic Institute
Auburn, Alabama

Hon. Ralph P. Eagerton
Examiner of Public Accounts
State of Alabama
CAPITOL

Alabama Polytechnic Institute—Funds—Department of Examiners of Public Accounts—Constitution of Alabama 1901—Taxation.

1. Under the Constitution and statutes of the State the management and control of the affairs of the Alabama Polytechnic Institute are vested exclusively in the Board of Trustees of such institution.

2. The Auburn Athletic Association, the Auburn Society for Public Improvement, Incorporated, and the Auburn Research Foundation are all agencies of the Alabama Polytechnic Institute created by the governing body thereof, the Board of Trustees, to assist such Board in its control and management of the affairs of such school, and as such, the books, records and accounts of these corporations or agencies are subject to examination and audit by the Department of Examiners of Public Accounts.

3. The Auburn Alumni Association is not an agency of the Alabama Polytechnic Institute or of the State of Alabama and, hence, the books, records and accounts of such association are not subject to examination and audit by the Department of Examiners of Public Accounts.

4. The Auburn Athletic Association, the Auburn Society for Public Improvement, and the Auburn Research Foundation, being agencies of a State instrumentality, are entitled to the

privileges, benefits, and exemptions applicable to the State of Alabama pertaining to the Federal and State tax laws.

5. The Auburn Alumni Association, not being an agency of a State instrumentality, is not entitled to the privileges, benefits, and exemptions applicable to the State of Alabama pertaining to the Federal and State tax laws.

Opinion by Assistant Attorneys General Hardin and Livingston.

Gentlemen:

Your request for an official opinion, bearing date of February 27, 1953, is as follows:

"We, the undersigned, request your opinion concerning the following questions:

"1. Has the Department of Examiners of Public Accounts the duty and authority to examine under Title 55, Article 7 of the Code of Alabama of 1940, as amended by Act No. 351, General Acts of 1947, page 231, or any other provision of law, the accounts of The Auburn Athletic Association which was incorporated on 1st day of February, 1938, in Lee County, Alabama, in accordance with Sections 7190, 7191 and 7192 of the Code of Alabama of 1923 for the purpose of promoting education and science and to encourage, stimulate and promote the health and physical welfare of the students of The Alabama Polytechnic Institute and the youth of the State of Alabama, copy of which incorporation papers are hereto attached, and which corporation receives its operating income from the gate receipts of athletic contests, donations and student ticket books purchased from a portion of the Student's Activity Fee collected upon his matriculation, but which corporation receives no appropriated funds?

"2. Has the Department of Examiners of Public Accounts the duty and the authority to examine under Title 55, Article 7 of the Code of Alabama of 1940, as amended by Act No. 351, General Acts 1947, page 231, or any other provision of law, the accounts of The Auburn Society for Public Improvement, Incorporated, which was incorporated on 25th day of May, 1938, in Lee County, Alabama, in accordance with Sections 7190, 7191 and 7192 of the Code of Alabama of 1923 for the purpose of promoting the development and betterment of the City of Auburn and the general welfare of the youth of the State of Alabama, copy of which incorporation papers are hereto attached, and which corporation receives its operating income from rentals and sale of real estate purchased with borrowed money secured by the real estate purchased therewith, and which receives no appropriated funds?

"3. Has the Department of Examiners of Public Accounts the duty and the authority to examine under Title 55, Article 7 of the Code of Alabama of 1940, as amended by Act No. 351, General Acts 1947, page 231, or any other provision of law, the accounts of the Auburn Research

Foundation which was incorporated on the 28th day of November, 1944, in Lee County, Alabama, under Title 10, Section 150, Code of Alabama of 1940 for the purpose of promoting the general welfare of the State of Alabama and the citizens thereof and to encourage educational and scientific research and to provide means whereby discoveries and inventions may be protected and licensed so as to be of maximum use to the state, copy of which incorporation papers are hereto attached, and which corporation receives its operating income from donations, contracts with privately owned industry and agencies of the state and federal governments and from patents and royalties, and which corporation receives no appropriated funds except by contract for services for the agencies for which such money was appropriated.

"4. Has the Department of Examiners of Public Accounts the duty and the authority to examine under Title 55, Article 7 of the Code of Alabama of 1940, as amended by Act No. 351, General Acts 1947, page 231, or any other provision of law, the accounts of the Auburn Alumni Association which was incorporated on the 19th day of April, 1945, in Lee County, Alabama, under Title 10, Section 150, Code of Alabama of 1940 for the purpose of promoting the welfare of the State of Alabama and The Alabama Polytechnic Institute and the beneficial relationship between the college and its alumni, copy of which incorporation papers are hereto attached, and which corporation receives its operating income from donations and dues and which receives no appropriated funds?

"5. Is the Auburn Athletic Association, a corporation, such a state corporation, department, agency or institution as to be entitled to the privileges, benefits and exemptions of the State of Alabama pertaining to the Federal and State Tax laws?

"6. Is The Auburn Society for Public Improvement, a corporation, such a state corporation, department, agency or institution as to be entitled to the privileges, benefits and exemptions of the State of Alabama pertaining to the Federal and State Tax laws?

"7. Is the Auburn Research Foundation, a corporation, such a state corporation, department, agency or institution as to be entitled to the privileges, benefits and exemptions of the State of Alabama pertaining to the Federal and State Tax laws?

"8. Is the Auburn Alumni Association, a corporation, such a state corporation, department, agency or institution as to be entitled to the privileges, benefits and exemptions of the State of Alabama pertaining to the Federal and State Tax laws?

"Doubt has existed for some years past as to proper answer to the above questions. It becomes imperative in the conduct of the affairs of the institution, including the post audit of the records and the accounts pertaining to the fiscal operation thereof by the State Department of Examiners of Public Accounts, that the authorities of the

school as well as the Chief Examiner of Public Accounts be provided answer to the above inquiries. The Legislative Committee on Public Accounts has recognized these questions to be legal rather than questions of policy; and, accordingly, this Committee is interested in the obtaining of your opinion concerning these matters as early as it is conveniently possible. Hence this joint request for your official opinion by the undersigned, the President of The Alabama Polytechnic Institute, and the Chief Examiner of Public Accounts."

Your first inquiry relates to the duty and authority of the Department of Examiners of Public Accounts with reference to the audit and examination of the books, records, and accounts of the Auburn Athletic Association. To give proper answer to such inquiry, it is necessary that I consider the legislative authority controlling the operation of such department together with the facts and circumstances surrounding the creation of the Auburn Athletic Association, as well as the articles of incorporation governing the operation of this association.

The Department of Examiners of Public Accounts was created by Act No. 351, General Acts 1947, page 231, which act abolished the Division of Examiners of Public Accounts previously existing in the Department of Finance. Under the terms of Section 1 of Act No. 351, supra, it is provided that the books, records, vouchers and accounts of every State and county office, officer, bureau, board, commission, corporation, institution, department, and agency shall be examined and audited at least once in every period of two years, and more frequently or continuously if that is deemed necessary or desirable by the Chief Examiner. Again, in Section 8(9) of Act No. 351, supra, it is provided that the Chief Examiner, as the executive and administrative head of the department ,shall have the power and duty to examine and audit the books, accounts, and records of all State and county offices, officers, bureaus, boards, commissions, corporations, departments and agencies. In view of this specific enumeration of the duty and authority of the department, it is only necessary that I determine whether the Auburn Athletic Association falls within any of the classifications or categories of agencies, institutions, corporations, etc., subject to audit and examination by this department.

To so determine this question I will first consider the constitutional and statutory authority governing the conduct of the affairs of the Alabama Polytechnic Institute, commonly known as Auburn. First considered are the provisions of Section 266, Constitution of Alabama 1901, which provide that such institution shall be under the management and control of a Board of Trustees consisting of two members of the congressional district in which the institute is located, and one from each of the other congressional districts in the State, together with the Governor and the State Superintendent of Education. Implementing statutory authority is to be found in Title 52, Sections 474-485, Code of Alabama 1940, amendment to such statutes not being material to the question here considered.

This office has previously had occasion to consider the above constitu-

tional provision and implementing statutes. Among former opinions treating of this subject are those to be found in Biennial Report of Attorney General 1918-1920, pages 445 and 474; Biennial Report of Attorney General 1920-1922, page 317; and Quarterly Report of Attorney General, Vol. 49, page 123. Each of such opinions is to the effect that the exclusive management and control of the affairs of the institute are vested in the Board of Trustees. I, therefore, am of the opinion that under the above constitutional and statutory authority it rests within the power and discretion of the Board of Trustees to create, for the management of the athletic affairs of the institution, the Auburn Athletic Association. The fact that such association is a corporate body, organized in conformity with the articles of incorporation found attached to your request for opinion, to me is not material.

In my judgment the creation of such a corporate agency as that described in your first inquiry represents nothing more than a means or method by which the governing body of the institute, the Board of Trustees, chose to exercise its power and control over the direction of this particular phase of the activities of the school. I find nothing in the actions of the original incorporators of this association, most, if not all, of whom were then officers or employees of the institute, to indicate that this group in any wise purposed or intended to create an agency or instrumentality separate and apart from the school itself and over which not even the Board of Trustees exercised restraint and control. Rather, it is my opinion that the creation of such athletic association resulted from the exercise of judgment and discretion on the part of the Board of Trustees and their determination that such would be the most effective means by which to manage and control the athletic affairs of the school. Having so concluded this decision was carried into effect by the creation of this corporation and by the imposition on certain of the officers and agents of the institute of the duty of administering the corporate affairs of the association, subject at all times to the control and direction of the Board of Trustees.

Supporting such conclusion is the further fact that there accrues to such association as operating income the gate receipts of athletic contests together with a portion of the student activity fees utilized in the purchase of student ticket books, these being funds over which, unquestionably, the Board of Trustees exercises direction and control. I, therefore, conclude that it is the duty and the responsibility of the Department of Examiners of Public Accounts to examine and audit the records and accounts of the Auburn Athletic Association as same falls within the category of a corporation serving as an agency of an institution of the State and in each of such categories, singularly or collectively, is subject to audit by this department.

Your second and third inquiries present like question with respect to the records and accounts of the Auburn Society for Public Improvement, Incorporated, and the Auburn Research Foundation, copy of the articles of incorporation of each of such corporations being found attached to your request for opinion. In reply thereto I would advise that all that has been

previously stated with reference to the Auburn Athletic Association is here equally applicable and like reasoning should apply and like conclusion be reached. In each of such instances, it is my opinion that the corporation concerned is a mere creature of the governing body, the Board of Trustees, created and established by such Board for the purpose of exercising a measure of authority and control of the affairs of the institute vested in such Board of Trustees. Such being true, it is my further opinion that such corporations are mere agencies of the institute and, hence, the records and accounts of same are subject to examination and audit by the Department of Examiners of Public Accounts under the duty and authority vested in such department by Act No. 351, supra.

In this connection it would perhaps be well to note certain of the broad powers vested in the Board of Trustees relative to the control and direction of the financial affairs of the institute. As previously noted, former opinions of this office cited herein point up the fact that by Constitution and statute the management and control of the Alabama Polytechnic Institute is vested in its Board of Trustees. When funds become unconditionally the property of the institute its trustees are vested with their exclusive direction, subject to valid legislative implementation. Some of the funds over which the trustees exercise such exclusive control are listed as being (1) the interest funds, (2) tuition or fees derived from students, and (3) unconditional legislative appropriations for the maintenance and support of the institution.

Regarding this latter category of funds, I should point out that although the Constitution places the independent control of the Alabama Polytechnic Institute in its trustees, the Legislature may, in making appropriations for the support of its various activities, attach such conditions to appropriations as it deems wise and expedient. The trustees may accept or reject such appropriations, but if the appropriation is accepted the conditions attaching thereto are also accepted. The trustees under whose direction such funds are spent are charged with strictly and faithfully applying them solely to the purposes for which the funds were appropriated.

It, therefore, appears to me that the institute receives two types or classifications of operating revenue. The first consists of the funds derived from the general legislative appropriation for the support and maintenance of the school. These funds, although spent under the control and direction of the Board of Trustees, must be expended in accordance with any conditions attached thereto by the appropriating agency, the State Legislature. The second classification of operating revenue received by the institution consists of those funds accruing to the school from other sources, such as gate receipts of athletic contests, student fees, etc., which funds are the unconditional property of the institute and are expended under the exclusive direction and control of the Board of Trustees, subject to the limitation that same be applied to benefit the interests of the institution, and subject also to such valid legislaive enactments as may affect the same.

The above distinction is pointed out in the hope that same may prove of some benefit to the officers and agents of the institute in making expenditure of the operating revenue of the school and also to the representatives of the Department of Examiners of Public Accounts in making audit of the records and accounts of the institution. In each of such instances the distinction as to source and permitted use of such funds should be borne in mind. I note from your request that the corporations mentioned in your first three inquiries, namely, the Auburn Athletic Association, the Auburn Society for Public Improvement, Incorporated, and the Auburn Research Foundation receive no State appropriated monies, hence, the expenditure of the funds of each of these agencies would be subject only to the legally authorized control and conditions established by the Board of Trustees.

Regarding your fourth inquiry pertaining to the Auburn Alumni Association, I would advise that, in my opinion, such association or corporation is not an agency of the Alabama Polytechnic Institute nor any other State function and, therefore, the Department of Examiners of Public Accounts would not have the duty and responsibility nor the right and authority to audit and examine the books, records and accounts of such association.

That the Alabama Polytechnic Institute is an instrumentality of the State of Alabama carrying out a part of the State's program of public education, cannot be questioned. See Constitution of Alabama 1901, Section 266, and Sections 474-485, supra. See also the cases of **Allen, Collector of Internal Revenue for the District of Georgia v. Regents of University System of Georgia,** 304 U. S. 439, 58 S. Ct. 980, and **Turk v. County Board of Education of Monroe County,** 222 Ala. 177, 131 So. 436.

In view of the conclusions as expressed above, and in answer to your inquiries numbered five, six and seven, it is my opinion that the Auburn Athletic Association, the Auburn Society for Public Improvement, and the Auburn Research Foundation, being agencies of a State instrumentality, are entitled to the privileges, benefits, and exemptions applicable to the State of Alabama pertaining to the Federal and State tax laws. With respect to exemptions from sales and use tax, see Quarterly Report of Attorney General, Vol. 60, page 93, where it was held that the sales of tangible personal property to and the storage, use, or other consumption in this State of tangible personal property purchased at retail by the Department of Physical Education and Athletics of the University of Alabama is exempt from the sales and use tax. However, see also Quarterly Report of the Attorney General, Vol. 64, page 72, where it was held that a municipality, or agencies thereof, engaged in the business of selling at retail tangible personal property subject to the provisions of the Alabama Sales Tax Law is required to collect the sales tax and remit the same to the State of Alabama as provided by law. See also Quarterly Report of Attorney General, Vol. 69, page 49. The opinion reported in Vol. 64, supra, is also applicable to the State of Alabama, or an agency thereof, engaged in the

business of selling at retail tangible personal property subject to the sales tax.

With respect to your eighth inquiry, and in view of the above conclusion that the Auburn Alumni Association is not an agency of the Alabama Polytechnic Institute nor any other State function, it is my opinion that the Auburn Alumni Association is not entitled to the privileges, benefits, and exemptions applicable to the State of Alabama pertaining to the Federal and State tax laws.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 30, 1954

Hon. W. J. Terry
Superintendent of Education
State of Alabama
Montgomery 4, Alabama

Schools—State Department of Education.

1. The State Department of Education has authority to enter into contracts with private and parochial schools which are eligible to receive agricultural commodities for school lunch programs donated by the United States Department of Agriculture.

2. The State Department of Education has authority to send representatives into private and parochial schools which are eligible to receive agricultural commodities for school lunch programs donated by the United States Department of Agriculture.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of July 8, 1954, is as follows:

"The problem of entering into contracts with private and parochial schools and organizations for the distribution of USDA Donated Agricultural Commodities has been brought to my attention.

"These schools and organizations are eligible to receive the above mentioned commodities. Since they are small in number with comparatively small enrollments, it is impractical to deliver commodities in carload lots. For that reason, the State Department of Education has for the past few years consented to include them with distributions to public

schools. Federal authorities believe the representatives of the State Department of Education should make routine visits to and periodic checks on delivery of commodities to these schools.

"In view of that fact, I should like to request that you give me an answer to each of the following questions:

"1. Does the State Department of Education have the legal authority to enter into contracts with private and parochial schools and organizations?

"2. Does the State Department of Education have the legal right to send representatives into private and parochial schools and organizations?"

The United States statutes providing for Federal aid for school lunch programs are codified in Title 42, Chapter 13, U. S. C. A.

Chapter 13, supra, authorizes the United States Department of Agriculture to donate certain agricultural commodities for use in the school lunch programs of those schools eligible to obtain such Federal aid (Title 42, Section 1758, U. S. C. A.).

By virtue of Chapter 13, supra, certain "nonprofit private schools" are eligible to receive agricultural commodities donated by the United States Department of Agriculture for school lunch programs. These "nonprofit private schools" are defined in Title 42, Section 1760, U. S. C. A.

Pursuant to the provisions of Chapter 13, supra, the State Department of Education has entered into a contract with the United States Department of Agriculture. This contract designates the State Department of Education as the agency to which commodities are donated solely for redistribution to eligible recipients, and the contract places the burden upon the State Department of Education to make certain investigations and reports concerning the donated agricultural commodities after said commodities have been distributed among the schools in this State eligible to receive them.

Your inquiry states that the private and parochial schools with which you are concerned are eligible to receive the commodities here under consideration.

There is no prohibition in the Alabama law against the State Department of Education entering into contracts with private and parochial schools eligible to receive agricultural commodities donated by the United States Department of Agriculture, and the State law does not prohibit the sending of representatives into such private and parochial schools by the State Department of Education to make periodic investigations and reports as provided for in the contract mentioned above between the United States Department of Agriculture and the State Department of Education.

The premises considered, it is my opinion that, under the facts stated

and subject to the expressed limitations thereof, both of your inquiries should be answered in the affirmative.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 30, 1954

Hon. Bert E. Thomas
Tax Assessor
Mobile County
Mobile, Alabama

Taxation—Ad Valorem Taxes—Exemptions.

1. Imports stored in original package are exempt from State ad valorem taxes under the provisions of Article 1, Section 10, United States Constitution.

2. The term "import," as used in Article 1, Section 10, United States Constitution, does not include an article brought into this State from another state.

3. Merchandise manufactured in Mississippi and stored fifty miles away in Alabama is not exempt from ad valorem taxes under the provisions of Title 51, Section 2(m), Code of Alabama 1940, as last amended by Act No. 953, General and Local Acts 1951, page 1626.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion, bearing date of January 8, 1954, is as follows:

"We should appreciate your advising us as to the following:

"We have the situation in Mobile wherein various concerns not resident in this city are maintaining stocks of merchandise through the facilities offered by the Alabama State Docks. These goods are moved to the warehouses of the Alabama State Docks both from within and from without the United States. Such concerns regularly ship merchandise from such stocks maintained at the Alabama State Docks to their customers both within and without the State of Alabama.

"On a smaller scale, stocks are similarly maintained at various private warehouses here in Mobile by non-resident owners. Shipments are made

from such stocks to their customers both within and without the State of Alabama, as outlined above as regards the Alabama State Docks.

"Several of these concerns have protested that in other states provisions are made in such circumstances whereby such stocks of goods are not subject to ad valorem taxation, and strongly hint that if we continue to treat such stocks of goods as ordinary stocks of goods, they will take their business to other ports where provisions are made for exemption from ad valorem taxation in such circumstances.

"Will you please advise us if you know of any provision of law whereby such stocks of goods as mentioned above, located either on the confines of the Alabama State Docks, or within private warehouses here in the City of Mobile, may legally be exempt from ad valorem taxation."

Following your original inquiry of January 8, 1954, additional facts were submitted by you in your letter of February 16, 1954, as follows:

"You will recall our conversation concerning the request of this office for an official opinion dated January 8, 1954. I have gone into this matter a little further and have the following specific information.

"One case in point concerns a merchandiser of canned sardines who imports his product from South Africa and maintains a stock at the Alabama State Docks. This merchandiser is not resident in the City of Mobile, but employs W. M. Meadow and Company, a broker, who acts as his local agent. Orders are filled at the State Docks from the stock maintained there, and go to various destinations, both within and without the State of Alabama. I am informed that there are no consignments outside the United States.

"Similarly, there are other concerns not resident in the City of Mobile who maintain stocks of goods of various kinds, both at the Alabama State Docks and in various private warehouses in Mobile. These stocks of goods principally come from other parts of the United States, but there may be some cases where imports are made. Orders are handled through various local agents and are filled from these stocks and are consigned to various destinations, both within and without the State of Alabama; but so far as I have been able to determine, not to destinations outside the United States.

"Since writing our request of January 8, we have been confronted with the tax problem of the Basila Manufacturing Company. This concern manufactures women's garments at Leaksville, Mississippi, about fifty miles from Mobile, and ships them to Mobile where a depot is maintained for packaging the garments and consigning them to various customers both within and without the State of Alabama.

"It is the contention of Mr. C. A. L. Johnstone, Jr., attorney for the Basila Manufacturing Company, that the stocks of goods maintained at the Mobile Depot are exempt from ad valorem taxation by virtue of

sub section M Section 2 of Title 51 of the 1940 Code of Alabama which reads as follows:

"'All manufactured articles including pig iron, in the hands of the producer or manufacturer thereof, when stored at or near the place of manufacture or within the county where same was manufactured or produced, shall be exempt from taxation for twelve months after its production or manufacture.'

"Mr. Johnstone and Mr. Basila have explained to me that the only reason why the dresses are brought to Mobile is to take advantage of the excellent transportation facilities offered by this City; but that if they are forced to pay ad valorem taxes on their stocks, they may have to consider the advisability of shipping their wares directly from the point of manufacture, thus saving the taxes thereon, as I am told that in Mississippi there is a section of their revenue act, which, like ours, provides for exemptions from ad valorem taxation for a specified period of manufactured articles."

In reply to a request for additional facts, you stated in your letter of June 7, 1954, as follows:

"With reference to your letter of May 28, I wish to advise that W. M. Meadow and Company have informed me that the sardines are imported in case lots and that these cases are stored and shipped out intact."

Your first inquiry relates to stocks of merchandise brought into the Port of Mobile from without the country and stored in warehouses belonging to the Alabama State Docks or privately owned warehouses (in either case, as I see it, the same result would follow). This question involves Article 1, Section 10, Clause 2, United States Constitution, which provides, in part, as follows:

"No state shall, without the consent of the Congress lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: . . ."

In the first and leading case construing this section, **Brown v. Maryland, 12 Wheat.** 419, 441, 6 L. Ed. 678, Chief Justice Marshall laid down, in general terms, the doctrine which is still followed today:

". . . when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the constitution."

Elaborating on this "original package doctrine," the Court, in **Hoover & Allison Co. v. Evatt,** 324 U. S. 652, 65 S. Ct. 870, said that imports for manu-

facture (in this case, bales of hemp kept in importer's storehouse near his factory), just as much as imports for sale, are entitled to immunity from state taxation as long as they are still in the original package, or until subjected to the manufacture for which they were imported.

As to what constitutes the "original package," the Court, in the case of **E. J. Stanton & Sons v. Los Angeles County, 78 Cal. App. 2d 181, 177 P. 2d** 804, 806, certiorari denied by the United States Supreme Court in 332 U. S. 766, summarizes the authorities as follows:

> "The article in Corpus Juris Secundum (15 C.J.S., Commerce, §28, page 310) declares that imports become subject to state regulation when the larger receptacle is broken for the purpose of selling and delivering the smaller units, and that they are no longer in the original package when they are sold; that an original package is an aggregation of goods put up in whatever form, covering or receptacle for transportation and as a unit transported. The import is subject to state taxation if the container is opened and smaller packages removed therefrom are offered for sale, or if the recipient of the package has an unexecuted intention to open it and sell its contents. (11 Am. Jur., p. 46 §§ 60, 62.) A large box containing bundles or parcels is the original package and when opened each parcel loses its character as an import, becomes a part of the general mass of property and is subject to local taxation. **F. May & Co. v. New Orleans,** 178 U. S. 496, 20 S. Ct. 976, 44 L. Ed. 1165, 1170."

In the same case of **E. J. Stanton & Sons v. Los Angeles County,** supra (at page 807), where lumber was imported, the Court said:

> ". . . the conclusion is irresistible that the unit of importation is the original package; that such unit only and not its constituent elements is within the exclusive federal jurisdiction. Although a cargo in bulk may arrive at the port of entry in irons, or wrapped and tied with hemp ropes, or encircled with a silken thread or, as a herd of steers, have no binder at all, yet the entire shipment without regard to its exterior wrapper is the original package. A cargo of planks, timbers or logs imported from foreign lands is surrounded by the invisible gossamer woven of law, custom and convention which protects the merchandise from the local tax assessor only so long as it retains the unbroken wrapper in which it entered the port. But when such cargo sheds its invisible cover, even though in the warehouse of the importer, and is so sorted and classified as to facilitate its sale, and portions thereof are sold until the pile is depleted and the remnants thereof are commingled with new shipments of the same type of timbers, also to be offered for sale, then a reasonable construction of section 10 and the decisions which have interpreted its meaning compel the termination of immunity from local taxation of such broken lots and commingled remnants of imported lumber."

Mr. Chief Justice Taney in the **License Cases, 5 How.** 504, 575, observed:

> ". . . In the nature of things, the line of division is in some degree

vague and indefinite, and I do not see how it could be drawn more accurately and correctly, or more in harmony with the obvious intention and object of this provision in the constitution. Indeed, goods imported, while they remain in the hands of the importer, in the form and shape in which they were brought into the country, can in no just sense be regarded as a part of that mass of property in the State usually taxed for the support of the State government."

From the above it can be seen that it is not always easy to tell just when the import remains in its "original package." Each individual case must of necessity turn on its own particular facts.

In the specific instance pointed out by your letter of February 16, 1954, and supplemented by letter of June 7, 1954, where the merchandiser imports sardines from South Africa, it appears that the canned sardines are brought in in case lots, stored and shipped out intact, and, therefore, remain in the original package in which they were imported. For that reason they are, in my opinion, immune from State ad valorem taxation. From the facts available in your letters, it must be assumed that this merchandiser is the importer. It is also assumed, from the facts stated, that the cases of sardines belonging to the importer are stored separately and plainly marked so as to avoid becoming commingled with the general mass of property.

As to your second inquiry, relating to those concerns maintaining stocks of goods brought into the Port of Mobile from other states, it is well settled that the term "import," as used in the constitutional provision quoted above, does not include an article brought into the Sate from another state. **Woodruff v. Parham, 8 Wall. 123, 19 L. Ed. 382; Brown v. Houston, 114 U. S. 622, 29 L. Ed. 257.** Hence, transportation of goods from one state to another is subject only to Section 8 of Article 1, United States Constituiton, which gives Congress power to regulate commerce with foreign nations and among the several states and with Indian tribes, with the result that as soon as an article shipped from State A to State B is at rest in State B, it is subject to a nondiscriminatory tax by State B. **Brown v. Houston, supra.**

It, therefore, seems clear from the facts asserted in your letters that the stocks of merchandise coming into the warehouses from other states became part of the merchandiser's stock of goods and are subject to State ad valorem taxation.

As to your last inquiry, concerning garments manufactured by the Basila Manufacturing Company in Leaksville, Mississippi, and shipped fifty miles to Mobile to be packaged and consigned to customers, I am of the opinion that such stock is taxable, and does not come within the exemption from ad valorem taxation contained in Title 51, Section 2(m), Code of Alabama 1940, as last amended by Act No. 953, General and Local Acts 1951, page 1626, which provides:

"All manufactured articles including pig iron, in the hands of the pro-

ducer or manufacturer thereof, when stored at or near the place of manufacture or within the county where same was manufactured or produced, shall be exempt from taxation for twelve months after its production or manufacture."

In passing this provision, the Legislature obviously had in mind the encouraging of manufacturing in Alabama—not in Mississippi, as is the case here. Statutes creating an exemption from taxation must be strictly construed. **Brown v. Protective Life Insurance Co.**, 188 Ala. 166, 66 So. 47. The words used in the statute are "at or near" the place of manufacture. Here the distance from place of manufacture to point of storage is not only fifty miles, but also transcends the State line as well. A reasonable interpretation of the phrase "at or near" does not, in my opinion, bring the situation you have outlined within the exemption provided for in Section 2(m), as amended, supra.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

August 30, 1954

Hon. J. Rex Wright
Mayor, Town of Guin
Marion County
Guin, Alabama

Ad Valorem Taxes—Taxation—Exemptions.

1. Raw materials are exempt from ad valorem taxation if produced during current calendar year and if stocked at a plant or furnace for manufacturing purposes in Alabama, under Title 51, Section 2(1), Code of Alabama 1940 ,as amended by Act No. 953, General and Local Acts 1951, page 1626.

2. Manufactured articles in the hands of the producer or manufacturer thereof are exempt from ad valorem taxation for twelve months after production or manufacture only when stored at or near the place of manufacture or within the county where the same was manufactured or produced, under Title 51, Section 2(m), Code of Alabama 1940, as amended by Act No. 953, General and Local Acts 1951, page 1626.

3. Raw materials are exempt from ad valorem taxation during the time that they are in the process of being manufactured into a finished product.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion, bearing date of August 18, 1954, is as follows:

"As you know, the Town of Guin has been working for years to bring new industries to its locality. We now have a very fine manufacturing prospect which we hope to locate in our city. They, of course, are very much interested in the tax structure as it relates to inventories, both as to raw materials, work in process, and manufactured articles. I quote to you the following provisions from Section 2 of Title 51 of the 1940 Code of Alabama, to wit:

" 'The following property and persons shall be exempt from ad valorem taxation and none other:

" 'Subsection (1) All raw material ,including coke, produced during the current calendar year, when stocked at any plant or furnace, for manufacturing purposes in Alabama.

" 'Subsection (m) All manufactured articles including pig iron, in the hands of the producer or manufacturer thereof, when stored at or near the place of manufacture or within the county where the same was manufactured or produced, shall be exempt from taxation for twelve months after its production or manufacture.'

"My question is: Do the quoted provisions of Section 2 of Title 51 of the 1940 Code of Alabama exempt from all advalorem taxes, including personal property taxes, all raw materials situated on the plant premises of the manufacturer and all materials and goods during the time that they are in the process of being manufactured; and all manufactured goods and articles, the exemption pertaining to the manufactured goods and articles being applicable for a period of twelve months after the time the manufacture of the said goods and products has been completed? Also, are any of the said raw materials, goods, and articles, while situated within the State of Alabama, subject to any other tax of the State of Alabama, County of Marion, or any municipality therein?"

For convenience, the questions presented in your inquiry are restated and numbered as follows:

1. Are all raw materials situated on the plant premises of the manufacturer exempt from ad valorem taxes?

2. Are all materials (raw) and goods during the time that they are in the process of being manufactured exempt from ad valorem taxes?

3. Are all manufactured goods and articles exempt from ad valorem taxes under certain conditions?

4. Are any of said raw materials, goods and articles subject to any other tax of the State of Alabama, County of Marion, or any municipality therein?

Your first question can be answered by reference to the provisions of Title 51, Section 2(1), Code of Alabama 1940, as amended by Act No. 953, General and Local Acts 1951, page 1626, said section being quoted in your inquiry. All raw materials, including coke, meeting the requirements set forth in Section 2(1), as amended, supra, are exempt from ad valorem taxation by virtue of the specific provisions of said section.

Similarly, your third question can be answered by reference to the provisions of Title 51, Section 2(m), Code of Alabama 1940, as amended by Act No. 953, supra, said section being quoted in your inquiry. All manufactured articles, including pig iron, meeting the requirements set forth in Section 2(m), as amended, supra, are exempt from ad valorem taxation by virtue of the specific provisions of said section. See Quarterly Report of Attorney General, Vol. 56, page 32, and Quarterly Report of Attorney General, Vol. 68, page 31.

The answer to your second question is not found in the specific provisions of Section 2(1) and (m), as amended, supra, or any other statutory provision. However, since the raw materials and the manufactured articles are exempt from ad valorem taxation under Section 2(1) and (m), as amended, supra, as stated above, it is my opinion that the raw materials used during the time that such materials are in the process of being manufactured into a finished product are also exempt from ad valorem taxation. Otherwise, it would appear to be prohibitively impractical to determine when such raw material, entitled to the exemption under Section 2(1), as amended, supra, become subject to taxation during the manufacturing process. In view of these two statutes exempting, under certain conditions, raw materials and the manufactured articles, it is, in my judgment, the legislative intent that the exemption applicable to raw materials remains in effect until the raw materials become manufactured articles, at which time the exemption applicable to manufactured articles becomes effective.

Since your fourth question is general in nature and includes no specific set of facts, I cannot give you a specific answer. It appears that the taxes, other than ad valorem, with respect to which a question may arise are sales and use taxes. There are many provisions in the sales and use tax statutes which would be applicable here, and to attempt a discussion of all of these various statutes and the interpretations placed thereon, would result in a text of considerable proportion. However, in order to assist you in considering the applicable statutes, your attention is called to the following which relate to the sales and use tax:

1. Title 51, Section 752, Code of Alabama 1940, as amended by Act No. 305, General Acts 1947, page 160. (Definitions, sales tax.)

2. Title 51, Section 753, Code of Alabama 1940, as amended by Act No. 121, General and Local Acts 1951, page 348. (Tax levied on gross receipts—sales tax.)

3. Title 51, Section 755, Code of Alabama 1940, as amended by Act No. 211, General and Local Acts 1949, page 302. (Exemptions—sales tax.)

4. Title 51, Section 787, Code of Alabama 1940. (Definitions—use tax.)

5. Title 51, Section 788, Code of Alabama 1940, as amended by Act No. 209, General and Local Acts 1951, page 472. (Property taxed; persons liable—use tax.)

6. Title 51, Section 789, Code of Alabama 1940, as amended by Act No. 210, General and Local Acts 1949, page 300. (Exemptions—use tax.)

7. Act No. 115, General and Local Acts 1949, page 139, as amended by Act No. 81, General and Local Acts 1951, page 296 (Marion County sales and use tax), which acts by reference thereto incorporate therein the provisions of the State of Alabama sales and use tax statutes.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 2, 1954

Hon. Hollis C. Smith, Chairman
Board of Revenue
Lauderdale County
Florence, Alabama

Lauderdale County — Highways and Highway Department — Roads and Bridges.

Act No. 30, General and Local Acts 1953, page 32, which provides that the State Highway Department shall be responsible for the construction, maintenance and repair of county roads in Lauderdale County, does not limit or restrict the power of the Board of Revenue of Lauderdale County to reopen county roads unlawfully closed by individuals.

Opinion by Aassistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of Auguist 17, 1954, is as follows:

"Act #30, Alabama Legislature, Regular Session of 1953, placed the Lauderdale County Roads under direct control of the State Highway Department. Section 2, of this Act, places the limitations of the County Governing Body into three definite areas. Item 'C' of Section 2, of said Act explains the duty of acquiring right-of-ways.

"The question which I must refer to your office is as follows:

"Does the County Governing Body have legal jurisdiction over keeping

public roads, heretofore, made public and constructed by the county, open and as a public road? The situation or situations which warrants my inquiry is that a road or roads have been fenced by individuals without declarations of vacations and these roads having been public roads, constructed and maintained by the County Road Department, should remain open to the public. Under authority of Act #30 and those delegated to the Governing Body, can the Board of Revenue, through its legal powers force these roads to remain open?"

Title 23, Section 43, Code of Alabama 1940, as amended by Act No. 729, General and Local Acts 1953, page 984, reads in pertinent part as follows:

"The courts of county commissioners, boards of revenue, or other like governing bodies of the several counties of this state have general superintendence of the public roads, bridges and ferries within their respective counties so as to render travel over the same as safe and convenient as practicable. To this and they have legislative, judicial, and executive powers, except as limited in this chapter. Courts of county commissioners, boards of revenue, or courts of like jurisdiction are courts of unlimited jurisdiction and powers as to the construction, maintenance and improvement of the public roads, bridges and ferries in their respective counties, except as their jurisdiction or powers may be limited by the local or special statutes of the State . . ."

Section 43, as amended, supra, gives the county governing bodies general jurisdiction, with legislative, executive and judicial powers, over the matter of providing a system of county roads. The county governing bodies have authority to reopen and repair roads which have been closed without authority of law. See **Alabama Great Southern Railway Company v. Denton**, 239 Ala. 301, 195 So. 218, and cases cited therein.

Act No. 30, General and Local Acts 1953, page 32, mentioned in your inquiry, reads in part as follows:

"Section 1. The State Highway Department shall, subject to the provisions and limitations contained in this Act, be responsible for the construction, maintenance and repair of the county roads and bridges in Lauderdale County.

"Section 2. The county governing body of Lauderdale County shall have and exercise only the powers and functions relative to the construction, maintenance and repair of the county roads and bridges as are conferred upon it by this act, as follows: . . . ."

By virtue of Section 1 of Act No. 30, supra, the State Highway Department is made responsible for the construction, maintenance and repair of county roads in Lauderdale County. By virtue of Section 2 of Act No. 30, supra, Lauderdale County is limited in its powers and functions relative to the construction, maintenance and repair of its county roads. However, there is no provision in Act No. 30, supra, limiting the powers and functions of Lauderdale County in the general superintendence of its public

roads, except those powers and functions relative to the construction, maintenance and repair of said roads.

Title 23, Section 135, Code of Alabama 1940, provides that it is a misdemeanor "to obstruct a public road by a fence, bar, or other impediment, except by gates erected across the same by leave of the court of county commissioners, obtained as provided by law."

Premises considered, it is my opinion that the Board of Revenue of Lauderdale County still has the power to reopen roads closed by individuals without authority of law.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 9, 1954

Hon. Wayland Mills, Clerk
Escambia County
Board of Revenue
Brewton, Alabama

Elections—Poll Tax and Poll Lists—Judges of Probate—Escambia County.

1. The judge of probate is not authorized to have copies of the list of qualified electors printed for the use of the general public and probate office.

2. Escambia County may not pay for printing copies of the list of qualified electors for the use of the general public and probate office.

3. The judge of probate is not authorized to employ additional assistants and clerical help to prepare the list of qualified electors which must be published in a newspaper.

4. Escambia County may not pay clerical help for preparing the list of qualified electors which must be published in a newspaper.

Opinion by Assistant Attorney General Gish.

Dear Sir:

You have submitted two requests for official opinions, both bearing date of May 28, 1954. Your first request is as follows:

"I will appreciate it very much if you will please give me your opinion on the following question at your earliest convenience.

"Title 17, Section #38, Code of 1940, requires the Judge of Probate to prepare and furnish qualified voters list for election officials in each election held in the County. Title #17, Section #55, Code of 1940 authorizes the Judge of Probate to employ clerical assistance to prepare this list and also authorizes the Board of Revenue to pay for such service at the rate of 5 cents per name.

"Under the provisions of the General Law and the provisions of Local Act #44, page #47, of the 1945 Local Acts, can the Judge of Probate have some printing company or newspaper print several hundred copies of the above list, for use of the general public and Probate Office and can the County of Escambia legally pay such printed or newspaper for printing such list? This payment to the printer or newspaper is for printing said list and not for publication."

Your second request is as follows:

"Title #17, Section #38, of the 1940 Code of Alabama, requires, among other things, that the Judge of Probate prepare a list of qualified voters of the County to be furnished some newspaper in the county for publication therein. This Section requires the Judge of Probate have this list published on or before April 15th., 1940 and each two years there-after.

"Under the heading of 'Cross References' following this Section of the Code, there is a reference made as to the method of payment for clerical assistance in preparing list of qualified voters. This reference is made to Section #55 of this same title and such section authorizes the Judge of Probate to employ clerical assistance in preparing list of qualified voters and authorizes such payment to be made by the County Board of Revenue at the rate of 5 cents per name.

"Under the provisions of the General Law and the provisions of Local Act #44, page #47, Local Acts of 1945, can the Judge of Probate employ clerical assistance in preparing this list for publication and can Escambia County legally pay the rate of 5 cents per name for such service."

Your first request asks whether the judge of probate may have copies of the list of qualified electors which he is required to furnish election inspectors printed for the use of the general public and the probate office, and whether Escambia County may pay for printing such copies for such use.

This question is answered in the negative.

Title 17, Sections 38 and 40, Code of Alabama 1940, as amended by Act No. 482, General Acts 1947, page 331, prescribe the duties of the judge of probate in regard to the preparation, publication and delivery of lists of qualified electors in the county. These duties are:

1. He shall, after the first day of February of each year, compare the

official lists of registered electors with the poll tax lists which have been furnished him by the tax collector, and ascertain from such comparison the names of such persons on the official lists who have failed to pay any poll tax which is legally due; and by such comparison and other available information, he shall make a correct alphabetical list of all qualified electors registered by precincts and other subdivisions.

2. He shall publish such list so made up in some newspaper with a general circulation in the county on or before the 15th day of April, in even numbered years. No publication is required in odd numbered years.

3. He shall deliver, or cause to be delivered, a list of the qualified electors at each voting place to the election inspectors immediately preceding every election or primary.

The above duties are the only ones prescribed by our law in regard to the preparation, publication and delivery of the lists of qualified electors by the judge of probate. There is no statutory authorization for the preparation of such lists for the use of the general public and the probate office.

Act No. 44, Local Acts 1945, page 47, was passed to supplement Title 12, Section 110, Code of Alabama 1940. These statutes deal with equitable claims against the county and authorize the payment of certain moral and equitable claims for which the county is not legally liable. A claim for printing lists of qualified electors for an unauthorized use is not a moral or equitable claim against the county.

Therefore, it is my opinion that neither Act No. 44, supra, nor Section 110, supra, nor any other provision of our law, authorizes Escambia County to pay for the printing of a list of qualified electors for the use of the general public and the probate office.

Your second request asks whether Escambia County may pay for clerical help employed by the judge of probate to assist in preparing the list of qualified electors which must be published in a newspaper once every two years.

This question is answered in the negative.

Title 17, Section 55, Code of Alabama 1940, as amended by Act No. 385, General and Local Acts 1951, page 677, authorizes the judge of probate to employ such assistants and clerical help as may be necessary to complete and properly prepare the list of qualified electors which he is required to furnish the election inspectors in each election or primary. Quarterly Report of Attorney General, Vol. 8, page 198; Vol. 25, page 180; Biennial Report of Attorney General, 1936-38, page 358. The compensation of such assistants and clerical help is payable out of the county treasury in the amount prescribed by Section 55, as amended, supra. Quarterly Report of Attorney General, Vol. 26, page 125; Vol. 66, page 88. However, Section 55, as amended, supra, makes no provision for employing assistants and cleri-

cal help to prepare the list of qualified electors which must be published in a newspaper.

For a discussion of the scope of Section 55, as amended, supra, see opinion found in Quarterly Report of Attorney General, Vol. 74, page 84, and opinion rendered to Hon. Isaac Johnson, Jr., Judge of Probate, Lawrence County, under date of May 7, 1954, copies of which are enclosed.

As poined out, supra, in the discussion of your first question, Act No. 44, supra, and Section 110, supra, deal with equitable claims against the county. The preparation of the list of qualified electors for publication is a regular duty of the judge of probate and there is no provision for compensating the assistants and clerical help to prepare such list.

Therefore, it is my opinion that Act No. 44, supra, and Section 110, supra, do not authorize Escambia County to pay clerical help and assistants for preparing the list of qualified electors which must be prepared by the judge of probate for publication in a newspaper.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 14, 1954

Hon. George P. Quarles
Judge of Probate
Dallas County
Selma, Alabama

Counties—Coroners—Claims—Limitation of Actions.

By virtue of Title 12, Section 110, Code of Alabama 1940, the county governing body may, in its discretion, allow for payment a claim for coroner's fees which is barred as not having been presented within twelve months from the time said fees accrued or became payable.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of September 1, 1954, is as follows:

"I would like to ask your official opinion relating to the fees of the County coroner which are more than twelve months old and for which claims have not been filed.

"By a local act, House Bill 315—Givhan, Local Act No. 48, approved May 28, 1943, the coroner of Dallas County was authorized an additional fee of $2.50 per investigation. Since that time this additional fee has not been collected by the coroner, Mr. Bernard A. Reynolds. Apparently he has just become aware of the existence of the law and now wishes to collect for these back years.

"According to an opinion of the Attorney General appearing in Volume 16, page 296, dated September 28, 1939, these back payments of more than twelve months duration could be allowed for payment.

"However, according to another Attorney General's Opinion in Volume 66, page 66, dated February 18, 1952, the opinion holds that any claims more than twelve months old are barred by the statute of limitations. "I would like to ask your official opinion on the following question:

"Are the fees of the coroner which are more than twelve months old and for which claim has not been filed barred by the statute of limitations, or are they legally allowable for payment?"

Your attention is directed to Title 12, Section 118, Code of Alabama 1940, which is as follows:

"Section 118. Claims barred if not presented.—All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability."

The answer to your question depends on whether a claim for coroner's fees which are barred by Section 118, supra, may be allowed by the county governing body by virtue of the provisions of Title 12, Section 110, Code of Alabama 1940, which is as follows:

"Section 110. Equitable claims or demands against county; mode of payment provided.—The court of county commissioners, board of revenue, or other governing body of any county may appropriate from the general or special funds of the county, such sums of money as such governing body shall determine from time to time for the following purposes: First, to reimburse any person, firm or corporation, who in good faith has performed service, advanced money, or property for the use of the county, or who has in good faith bought county warrants issued under invalid acts of the legislature for tick eradication or for building public roads. Second, to refund to any person, firm or corporation, money, or compensate him or it for services rendered or money or property advanced and devoted to the use of the county, in procuring funds for carrying on road improvement, tick eradication, (sic) or any lawful public work, where, after the advancement of such money, or property, or the rendition of such service, it was declared by decision of the supreme court, or by the decision of the attorney-general that the county was without authority to pay such claims, on account of a defect in any law or any other reason."

Section 110, supra, is not a mandate to the county governing body, but confers upon it discretionary authority to make payment of certain equitable and moral claims against the county. **Deal v. Tuscaloosa County,** 253 Ala. 523, 45 So. 2d 691; **Rice v. Tuscaloosa County,** 242 Ala. 62, 4 So. 2d 497.

Both opinions cited in your inquiry, Quarterly Report of Attorney General, Vol. 16, page 296, and Vol. 66, page 66, recognize the fact that our Supreme Court has held that a coroner must present his claim for fees to the County governing body within twelve months after said fees accrue or become payable, otherwise said fees are barred by virtue of Section 118, supra. See **Miller, Treasurer v. State ex rel. Paris, Coroner,** 145 Ala. 494, 39 So. 658.

The opinion reported in Vol. 16, page 296, supra, further held that a claim for coroner's fees which is barred by Section 118, supra, may be allowed by the county governing body under Section 110, supra. The opinion reported in Vol. 66, page 66, supra, did not consider Section 110, supra. Therefore, these two opinions are not in conflict.

There have been numerous opinions of this office holding that a county governing body may pay an equitable claim against the county which is barred by Section 118, supra, under the authority of Section 110, supra. In an opinion reported in Quarterly Report of Attorney General, Vol. 58, page 66, the following is found:

> "Even though a claim against a county may be barred for failure to present it to be audited and allowed within one year as required by Section 118, supra, this office has held under the authority of Title 12, Section 110, Code of Alabama 1940, that where the county has actually received services, money or property the claim may be allowed and paid at the discretion of the county governing body. Quarterly Report of Attorney General, Vol. 10, page 133; Quarterly Report of Attorney General Vol. 14, pages 131, 142, 144 and 304; Quarterly Report of Attorney General, Vol. 18, page 81; Quarterly Report of Attorney General, Vol. 19, page 299; Quarterly Report of Attorney General, Vol. 22, page 194; Quarterly Report of Attorney General, Vol. 26, page 134; Quarterly Report of Attorney General, Vol. 55, page 51 . . . ."

The opinion reported in Vol. 16, page 296, supra, is based upon ample authority, is sound, and should be followed.

Premises considered, it is my opinion that by virtue of Section 110, supra, the county governing body may, in its discretion, allow for payment a claim for coroner's fees which are barred as not having been presented within twelve months from the time said fees accrued or became payable.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 16, 1954

Hon. L. H. McDonald
Judge of Probate
Winston County
Double Springs, Alabama

Military and Naval Affairs—State and State Departments—Counties—Municipalities—Officers and Offices.

1. Military leave pay provided for in Title 35, Section 12, Code of Alabama 1940, is applicable generally to all officers and employees of the State of Alabama, or of any county, municipality, or any other agency or political sub-division thereof, who are members of the National Guard and ordered to active duty pursuant to the Governor's Proclamation.

2. Military leave pay as provided by Title 35, Section 12, Code of Alabama 1940, is limited to twenty-one working days at any one time.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of August 25, 1954, is as follows:

"It is respectfully requested that you give to me as soon as reasonably possible your opinion on the following question:

"The County Solicitor of Winston County is paid a salary by the Court of County Commissioners. On or about July 28, 1954, our solicitor Mr. Elwood Rutledge, who is a Captain in the National Guard was called into service and required to report to Phenix City, Ala., to assist in the work of the National Guard there. The County Court was in session on August 2nd, and 3rd, 1954, and the regular solicitor not being in position to serve the Judge of the County Court appointed an attorney to serve and certified the fact to the Court of County Commissioners as provided in Title 13, Section 235(1) as amended.

"Now, can the Court of County Commissioners legally pay the County Solicitor his monthly salary during the time he is serving with the National Guard?"

The answer to your inquiry is found in Title 35, Section 12, Code of Alabama 1940, which provides as follows:

"All officers and employees of the State of Alabama, or of any county, municipality, or other agency or political subdivision thereof, who shall be active members of the Alabama national guard or naval militia, or of the officer's reserve corps of the United States Army, or of the United States naval reserves, shall be entitled to military or naval leave

of absence from their respective civil duties and occupations on all days that they shall be engaged in field or coast defense or other training or on other service ordered under the provisions of this chapter, or of the national defense act, or of the federal laws governing the United States naval reserves, without loss of pay, time, efficiency rating, annual vacation, or sick leave, but no such person granted such leave or absence with pay shall be paid for more than twenty-one working days at any one time."

It appears that the officer to whom you refer, was called to active duty in the National Guard in accordance with the Proclamation issued by Governor Gordon Persons on July 22, 1954, placing Russell County under qualified martial rule, and orders pursuant thereto.

The orders directing the National Guard to Russell County were issued by Governor Persons pursuant to the authority granted him by Title 35, Section 59, Code of Alabama 1940. Therefore, personnel of the National Guard now on active duty in Russell County are obeying orders issued under the provisions of Title 35, Chapter 1, Code of Alabama 1940. Thus, the provisions of Section 12, supra, are applicable to your County Solicitor, as well as to all other National Guard personnel serving in Russell County.

It is clear from the above statute that the named public employees, who are active members of the designated branches of the armed forces, are entitled to certain compensation on account of their civilian employment while engaged in any one of the specified types of active duty in their respective branch of the armed forces.

However, the statute specifically declares ,and this office has held, that a public officer or employee serving on active duty in one of the specified branches shall continue to receive compensation from such civilian employment for not more than twenty-one working days. Quarterly Report of Attorney General, Vol. 62, page 71; Quarterly Report of Attorney General, Vol. 21, page 34.

Also, it was held that the term "working days" refers to the normal working days of any particular official concerned. And the phrase "at any one time" means each time any such officer or employee is called upon a tour of active duty he is entitled to not more than twenty-one working days leave of absence without loss of pay from his civilian employment.

Therefore, from the foregoing, it is my opinion that the officer in question is entitled to be paid his authorized compensation for not more than twenty-one working days during any one tour of active duty in the National Guard.

The principles enunciated in this opinion apply generally to all officers and employees of the State of Alabama, or of any county, municipality, or other agency or political subdivision thereof, who come within the provisions of Section 12, supra.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 16, 1954

Hon. G. H. Forrester
Deputy Superintendent of Banks
State of Alabama
The Capitol

Banks and Banking—Credit Unions—Mortgages.

Mortgages on residential property issued pursuant to Title II of the National Housing Act, insured by the Federal Housing Administrator or guaranteed by the Administrator of Veteran's Affairs, constitute legal investments for savings banks or trust funds and are, therefore, legal investments for a credit union when purchased for its portfolio.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion bearing date of September 9, 1954, is as follows:

"A firm of investment bankers has written this office and has submitted the following question, to-wit: 'Whether or not the State of Alabama charter issued to mutual savings credit unions permits such institutions to purchase from an approved FHA mortgagee, mortgages insured by the Federal Housing Administrator and mortgages guaranteed by the Veteran's Administration on residential properties sold under terms ranging from 20 to 25 or possibly 30 years.'

"Will you please advise this office of your determination of this question and oblige?"

Title 28, Sections 282-303, et seq., Code of Alabama 1940, provide for the organization and operation of credit unions in this State. A credit union is defined in Section 282, supra, as follows:

". . . . a cooperative society, incorporated for the two-fold purpose of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest for provident purposes, particularly among groups of industrial workers and farmers, fraternal and religious organizations, and in those communities where the citizens of the state are distantly removed from convenient centers of business or easy access to financial agencies now provided for by laws of Alabama. . . ."

Section 285, supra, provides certain powers which the credit unions are vested with and thereby authorized to use in their respective operations, including the power:

". . . . To invest in any investment legal for savings banks or for trust funds in the state. . . ."

The question, then, at the outset, is whether or not the mortgages insured by the Federal Housing Administrator and the mortgages guaranteed by the Veterans Administration or Administrator of Veteran's Affairs, pursuant to Title II of the National Housing Act, constitute legal investments for savings banks or for trust funds in this state, and are thus eligible for investment by purchase with credit union funds. I am of the opinion that the question is answered in the affirmative.

The law appears clear that the credit union may invest its funds by purchasing or investing in "any investment legal for savings banks or for trust funds in the state." (Emphasis added.)

Title 5, Section 120, Code of Alabama 1940, makes provision for the investment of funds of savings banks, and the pertinent part of this section is quoted as follows:

"It shall be lawful for banks, savings banks, trust companies, insurance companies, building and loan associations ,to purchase, invest in, and dispose of bonds or notes secured by mortgages insured by the federal housing administrator, and in debentures issued by the federal housing administrator, and in securities issued by national mortgage associations. . . . ." (Emphasis added.)

Title 58, Sections 49 and 50, Code of Alabama 1940, make provision for the investment of trust funds to be made in mortgages which are insured by the Federal Housing Administrator, and these sections are quoted as follows:

"Section 49. It shall be lawful for trustees, executors, administrators, guardians, and other fiduciaries, the State of Alabama, and any of its departments, boards, institutions and agencies, and of the municipalities, counties and other political subdivisions of the state, to invest their funds and the moneys in their custody or possession eligible for investment in notes or bonds secured by mortgages or trust deed insured by the federal housing administrator pursuant to the laws and regulations governing the insurance of such as now constituted or as hereafter amended and in debentures issued by such administrator.

"Section 50. It shall be lawful for trustees, executors, administrators, guardians and other fiduciaries to invest their funds in the moneys in their custody or possession eligible for investment in mortgages which have been accepted for insurance by the federal housing administrator pursuant to Title II of the National Housing Act. No law of this state requiring security upon which loans or investments may be made or prescribing the nature, amount or form of such security or prescribing or limiting the period for which loans or investments may be made shall be deemed to apply to loans or investments made pursuant to the foregoing paragraph."

Subsection (f) of Section 47, Title 58, Code of Alabama 1940, as amended by Act No. 763, General and Local Acts 1951, page 1330, has been con-

strued by this office in an opinion rendered to Dr. O. C. Carmichael, President, University of Alabama, under date of August 12, 1954* in which it was determined that mortgages guaranteed in whole or in part by the Administrator of Veteran's Affairs were included as legal investments where the trustees exercised reasonable business prudence in investing in the same.

I am of the opinion, therefore, that mortgages on residential property issued pursuant to Title II of the National Housing Act, insured by the Federal Housing Administrator, or mortgages guaranteed by the Administrator of Veteran's Affairs, constitute legal investments for savings banks or for trust funds in this State, and that a credit union chartered by the State may invest funds in purchasing such mortgages for its portfolio.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 24, 1954

Hon. W. J. Terry
State Superintendent of Education
State of Alabama
Montgomery 6, Alabama

Schools—City Boards of Education—County Boards of Education—Veterans—Funds.

1. City and county boards of education have authority, in cooperation with the State Board of Education, under Title 52, Section 385, Code of Alabama 1940, to establish vocational schools and classes giving instructions in agricultural subjects for veterans and others eligible for admission thereto, and may use any moneys raised by public taxation in the same manner as moneys for other school purposes are used for the maintenance and support of public schools. Sound administrative judgment should be exercised to insure reimbursement in respect to the veterans' program.

2. Any balances on hand at the end of the fiscal year arising from funds received by city or county boards of education from the Veterans Administration or from veterans for vocational training of veterans may be carried over in a special account separate from regular school funds and used in subsequent years. The funds must, however, be used for the respective purposes for which they were received.

Opinion by Assistant Attorney General Madison.

---

*Ante, page 25.

Dear Sir:

Your request for an official opinion, bearing date of August 18, 1954, is as follows:

"Plans have been made by the State Department of Education with county boards of education throughout the state for entering into contractual agreement with the Veterans Administration for continuing the operation of the Institutional On-Farm Training Program for World War II and Korean Veterans, beginning October 1, 1954.

"The Institutional On-Farm Training Program was made possible by the United States Congress when Public Law 346 was amended by Public Law 377, 80th Congress, for training of farm veterans in agriculture who were entitled to educational benefits under the G. I. Bill. The passage of Public Law 550 by the 82nd Congress in August 1952, provided the same training for farm veterans of the Korean conflict. The Veterans Administration was given authority under these laws to find ways and means for such training to be provided veterans.

"Public School Systems throughout the nations have been in operation for many years and since 1917, as a result of the passage of the Smith-Hughes Act, Vocational Agriculture has been taught to farm boys in many of the public schools throughout the Nation. As a result in the various states, it was found by the Veterans Administration that the logical agency in the several states to offer training in agriculture, as well as many other types of training, was the Public School System.

"In Alabama the State Department of Education was designated by Governor Sparks in 1945 as the training and Approval Agency for the training of all veterans in all types of training, other than those enrolled in the higher institutions of learning, and those enrolled in private institutions. The State Department of Education through the cooperation of county and city boards of education already had employed trained personnel to direct the program, as well as building and training facilities in which to give training. In view of the fact that the Governor designated the State Department of Education as the training and approval agency, ways and means for operating the program were developed by the State Department of Education.

"Inasmuch as there was no money appropriated by the Legislature at that time for operating an educational program for veterans, it had to be operated from funds appropriated by Congress to the Veterans Administration for financing all types of veterans' training including the Institutional On-Farm Training Program.

"It should be added that the Legislature of Alabama has never appropriated any money to the State Department of Education for the operation of an educational program for veterans, therefore, funds for operating the program have been secured on the basis of an approved contract between the State Department of Education and the Veterans

Administration. Actually the program has been operated on a self-supporting basis. In other words, the State Department of Education was reimbursed by the Veterans Administration by a contractual agreement on a cost basis. The State Department of Education in turn contracted with county and city boards of education for operating the program on a local level. They were reimbursed for the entire cost of operating the program from monies received from the Veterans Administration, inasmuch as there were no funds in the county from which an educational program for veterans could be financed. The program has been operated in this manner since September 1, 1947, in Alabama. This means in reality that the Institutional On-Farm Training Program for veterans has become a part of the public school system of the state, even though the cost of operating the program was paid out of Federal funds. This is true because of the fact that it would be most unusual and most undesirable to approve a non-educational group to conduct an educational program. In addition to this the cost would be prohibitive because the law, as provided by Congress, stipulates that the Veterans Administration will not reimburse any institution, public or private, more than $500.00 per year, per student for tuition, books, and supplies.

"There have been over 40,000 veterans in Alabama who have received training in the Institutional On-Farm Training Program and there were at one time over 21,000 veterans enrolled in the program in this state.

"As long as the enrollment was large the State Department of Education was able to operate on a state-wide unit contract, thus assuring veterans in counties where enrollment was small to train for a longer period of time than if the program had been operated on a county unit basis. However, as the enrollment has decreased, the cost has not decreased in proportion to the decrease in enrollment, and due to the limitation as set forth in the laws, for which the State Department of Education would be reimbursed by the Veterans Administration, the point has been reached whereby the State Department of Education cannot continue operating on a state-wide unit contract after September 30, 1954.

"In view of the above the only alternative for training in the Institutional On-Farm Training Program to be offered for veterans in this state is for boards of education who have sufficient enrollment to justify their negotiating a contract with the Veterans Administration and to offer such training. This contract will be negotiated on the same basis, and in the same manner, in which it has previously been negotiated with the State Department of Education, except that the Veterans Administration regulations will not allow an advance payment to county or city boards of education. In the past the Veterans Administration has allowed advance payments to the State Department of Education. That is, it will be negotiated on an approved cost basis. The county boards of education will receive reimbursement for operating

the program from the Veterans Administration instead of the State Department of Education. There are several thousand veterans in this state who are eligible for training in the Institutional On-Farm Training Program under the laws mentioned. There are approximately 1500 enrolled at the present time whose training would be interrupted if boards of education did not continue operating the program. In many cases it would mean that veterans would lose their educational benefits under the G. I. Bill, and also many other farm veterans would be denied the type training which they want and need.

"In making plans with the boards of education throughout the state for continuing to operate the program after October 1, 1954, certain questions have arisen on which I am respectfully requesting an official opinion from you.

"1. Do Boards of Education have the authority to pay salaries of teachers and other expenses incurred in operating this program after October 1, 1954, out of their school funds and be reimbursed from the Veterans Administration on a basis of an approved contract? Under the contract between county or city boards of education and the Veterans Administration, Boards of Education will normally be reimbursed by the Veterans Administration within 30 days. If the opinion is in the negative, it would mean the elimination of the Institutional On-Farm Training Program for veterans in Alabama after October 1, 1954, as previously stated. It would also mean that several other types of training might be eliminated, such as veterans enrolled in trade schools and programs presently operated by direct contract with the Veterans Administration. Boards of Education in the past have operated the program, but have been reimbursed by the State Department of Education on a contract basis and the State Department of Education in turn was reimbursed from the Veterans Administration on a contract basis.

"2. Is it legal to have a balance to be carried forward which might have been incurred in operating the Institutional On-Farm training from one State fiscal year to the next so long as it is accounted for in the general funds in a separate account

If the opinion is in the negative, it will severely handicap the operation of the program in some counties.

"The balance referred to in this question is incurred from the following sources:

"1. The Veterans Administration allows $1.25 per student month as a fair and reasonable charge without detailed calculation for such services as depreciation on instructional equipment, heat, light, power, water, janitor service, building maintenance, rent on non-public facilities, and laboratory space for training of veterans enrolled in the Institutional On-Farm Training Program under the provision of Public Laws 346 and 16. In many cases all the money allowed for the services listed above is not used in the same year, however, in other years more might

be used, therefore, it is desirable for county boards of education to be allowed to carry forward each year any balance incurred from monies received for this phase of the program. The basis for this allowance is provided for in Section IV, paragraph 2d, Public Law 377, 80th Congress, approved August 6, 1947. This law is an amendment to Public Law 346 which was passed by the 78th Congress on June 22, 1944.

"2. Public Law 550 passed by the 82nd Congress on August 20, 1952 provided training for veterans of the Korean Conflict. This law gives the Veterans Administration authority to reimburse the training institution $1.00 per student month for each Public Law 550 veteran enroleld without any substantiating claim. This fund is to cover expenses incurred by the institution in processing necessary records and reports. In many cases county boards of education might not have spent all of the funds received from the Veterans Administration for this purpose during the fiscal year, therefore, causing a balance to be accrued.

"3. Under the provision of Public Law 550 a customary tuition rate must be established by county or city boards of education who operate the Institutional On-Farm Training Program for veterans. Public Law 550 stipulates that the Veterans Administration cannot make reimbursement to county boards of education for a tuition rate for veterans in training under Public Laws 346 and 16 which is higher than the customary tuition rate charged Public Law 550 veterans or non-veterans. Contracts between county boards of education and the Veterans Administration will be negotiated for a period of twelve months. In view of this the county boards of education, in establishing a customary tuition rate for this period, must set it high enough to be certain that the cost per student month for the training of Public Law 346 and 16 veterans will not exceed the customary tuition rate. In view of this, it is inevitable that a small balance will accrue each year, inasmuch as the customary tuition is paid in advance to the county boards of education by the veterans themselves who enroll under the provision of Public Law 550."

The general administration and supervision of educational interests of cities and counties are vested in city and county boards of education, respectively. Title 52, Section 62, Code of Alabama 1940; Title 52, Section 151, Code of Alabama 1940; **Hughes v. Hartford Accident and Indemnity Company,** 223 Ala. 59, 134 So. 461.

Title 52, Section 385, Code of Alabama 1940, provides as follows:

"The board of education of any county or of any city having a city board of education, may cooperate with the state board of education in the establishment of vocational schools or classes giving instructions in agricultural subjects, in trade or industrial subjects or in home economics subjects and may use any moneys raised by public taxation in the same manner as moneys for other school purposes are used for the maintenance and support of public schools." (Emphasis supplied.)

In Quarterly Report of Attorney General, Vol. 61, page 86, the following is stated:

". . . The facts indicate that vocational training programs for veterans are conducted as part of the county and city school systems in the State of Alabama. These programs of training are conducted under the administrative supervision of the State Department of Education. The State Department of Education pays for the cost of administering such vocational training programs out of the funds provided by the United States and the State of Alabama, pursuant to the Smith-Hughes Act (28 U. S. C. 11-29, as amended) and Title 52, Sections 381-389, Code of Alabama 1940, as amended.

"This expenditure seems clearly to be an expenditure for vocational education within the meaning of Title 52, Sections 381-389, supra. The very facts in your request indicate that the funds are used to finance programs of vocational training. The fact that veterans are the recipients of such vocational training is irrelevant. Equally irrelevant as to the legality of the expenditure is the fact that the Veterans Administration reimburses the State Department of Education for certain monies expended to provide vocational education for veterans. The money which the Education Department actually spends is properly spent for vocational training."

The reasoning of this opinion is applicable in arriving at an answer to your first question. The Institutional On-Farm Training Program for training farm veterans in agriculture comes within the purview of Section 385, supra. Under this section, money raised by public taxation may be used for the maintenance and support of vocational schools or classes giving instructions in agricultural subjects in the same manner as moneys for other school purposes are used.

If the city and county boards of education are financially able to do so, schools or classes giving instructions in agricultural subjects may be established for the training of all persons eligible for admission thereto, whether they are veterans or not.

The fact that veterans are recipients of such vocational training is not material in determining authority for the operation of such schools or classes by said boards of education.

Likewise, the fact that the boards of education are reimbursed by the Veterans Administration for certain moneys expended to provide vocational education for veterans is not material in determining the legality of expenditure of funds by said boards for vocational education.

The question of reimbursement, however, is material in determining the financial ability of said boards of education to maintain and support schools and classes for vocational education. In this respect sound administrative judgment should be exercised to insure reimbursement insofar as the veterans' program is concerned.

It is my opinion, therefore, that your first question should be answered in the affirmative. Quarterly Report of Attorney General, Vol. 61, page 64; Vol. 70, page 70.

In my opinion your second inquiry must likewise be answered in the affirmative.

The money supplied to the several boards of education directly or indirectly by the Veterans Administration is solely for veterans' training. The funds from which you indicate you may possibly accumulate balances are supplied for designated purposes in connection with the veterans vocational education program. Therefore, these balances, if they actually result, should be kept in accounts separate from regular school funds and used for the purposes for which the funds were received. The balances might be needed in later years to meet the very expenses for which the money was originally supplied.

Therefore, I conclude that any balance incurred from any one of the three sources you mentioned may legally be carried forward in a special account.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 24, 1954

Hon. W. A. Scarbrough, Chairman
Board of Public Welfare
Coosa County
Rockford, Alabama

Merit System—Public Welfare, Department of—Officers and Offices.

The county board of public welfare, as appointing authority, has the power to dismiss the county director of public welfare for cause only, subject to the provisions of the State Merit System.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of July 31, 1954, is as follows:

"The Coosa County Board of Public Welfare desires an answer to the

question hereinafter propounded and the opinion of the Attorney General on the same.

"Code of Alabama, Title 49, Section 11, reads as follows:

" 'County Board to Appoint County Director.—It shall be the duty of the county board of public welfare to appoint a county director of public welfare who shall be the executive officer of the county department meeting the qualifications prescribed by the state board, and the appointment shall be made without regard to political affiliations. The tenure of the county director shall be at the pleasure of the county board. The salary of the county director shall be fixed by the county board in conformity with the salary schedule as prescribed by the state board.'

"Can a majority of the Board dispense with the services of its present County Director of Public Welfare at its pleasure? Or is such County Director of Public Welfare subject to and under the State merit system to such an extent that the services of such Director cannot be dispensed with at the pleasure of the Board."

Section 11, Title 49, Code of Alabama 1940, along with a number of other sections in that title, was repealed by Section 26, Act No. 703, General and Local Acts 1951, page 1211. However, while Act No. 703, supra, restated the law of this state relating to public welfare, many of the sections of Title 49, supra, were carried forward and included in whole or in part in Act No. 703, supra. This is true of the Code section to which you refer in your inquiry. The provisions of Section 11, supra, were included, in slightly altered form, within Section 7 of Act No. 703, supra, which provides in part as follows:

"The county board, subject to the provisions of the Merit System, shall appoint a county director who shall be the executive officer of the county department and the appointment shall be made without regard to political affiliation. The tenure of the county director shall be at the pleasure of the county board. Upon request of the local board, the State Personnel Department shall establish a county register of eligibles who are residents of the county in which the vacancy exists. If no appointment is made from the local register or there is no local register then appointment shall be made from the statewide register." (Emphasis supplied.)

The emphasized portion of the above quoted provision also appears in Section 11, supra, and obviously prompts your inquiry. The statement that "The tenure of the county director shall be at the pleasure of the county board," would seem to dictate the answer to your inquiry. However, other provisions of Act No. 703, supra, demand a further consideration of the problem presented by your request.

Section 9, Act No. 703, supra, provides that:

"On October 1, 1951, all county department employees shall be covered, with their current status, under the State Merit System."

The county director, an employee of the county welfare department, would clearly come within the provision of Section 9 above. Therefore, being under the State Merit System, the director could only be discharged in accordance with the provisions of Title 55, Section 315, Code of Alabama 1940, which section governs the dismissal of employees within the coverage of the State Merit System.

Thus, it is necessary to determine the legislative intent of Act No. 703, supra, in the face of conflicting legislative expressions.

It is normally true that special provisions relating to specific subjects will be considered as exceptions to, and controlling over general provisions relating to general subjects. **Herring v. Griffin**, 211 Ala. 225, 100 So. 202. Yet, there is a broader and more fundamental rule of statutory construction which demands that the intention of the Legislature, as expressed in the statute, be ascertained and given effect. **City of Montgomery v. Montgomery City Lines, Inc.**, 254 Ala. 652, 49 So. 2d 199. And the rules for construing statutes must be regarded as subservient to the end of determining legislative intent. **Dixie Coaches v. Ramsden**, 238 Ala. 285, 190 So. 92. Indeed, the intention of the Legislature in enacting a law is the law itself, and must be enforced when ascertained though it may not be consistent with the literal wording of a law. **Cole v. Gullatt**, 241 Ala. 669, 4 So. 2d 412. Therefore, the intention of the Legislature as expressed by Act No. 703, supra, must be ascertained, if possible.

Section 6, Act No. 703, supra, sets forth the duties, powers, and responsibilities of the State Department of Welfare. In subsection (5) thereof the State Welfare Department is authorized to act as the agent of the federal government in welfare matters of mutual concern and in the administration of any federal funds granted to the State for welfare work, and is empowered "to meet such federal standards as may be established for the administration of such funds."

Section 5, Act No. 703, supra, provides that in the determination of the basis upon which federal and state welfare funds shall be allocated to the several counties certain standards shall be set. And the standards so set "shall in no case contravene the Social Security Act and the rules and regulations promulgated thereunder."

From the provisions of Sections 5 and 6 of Act No. 703, supra, and from the general tenor expressed throughout the act, it appears that the Legislature intended that, insofar as necessary to secure federal funds for welfare work, all federal rules and regulations pertaining thereunto would be complied with provided the Constitution and laws of this State were not offended thereby.

The several federal statutes which provide for the payment of funds to the states for the different types of welfare assistance, i. e., funds for Old Age Assistance and funds for Aid to Dependent Children, etc., without exception require that, in order for a state to be entitled to any such welfare funds, the state seeking the funds must submit a plan to the Federal Security Administrator outlining the use to be made of the federal funds and the proposed methods of administration thereof. These plans must "provide . . . methods of administration (including . . . methods relating

to the establishment and maintenance of personnel standards on a merit basis . . .)." See Title 42, Sections 302, 713, 1202, 1352, U. S. C. A.

Title 42, Section 1302, U. S. C. A., authorizes the Secretary of the Treasury and the Federal Security Administrator to make and publish rules and regulations for the distribution and administration of federal funds made available for welfare work. Certain of the regulations fixed upon the authority of Title 42, Section 1302, supra, leave no doubt that the establishment of a merit system incorporating a provision that employees of a welfare department will not be separated without cause, and coverage of all the employees of welfare agencies thereunder is a condition precedent to the receipt of federal funds for welfare purposes. This is clearly apparent from the following regulations:

> "The 'Standards for a Merit System of Personnel Administration' contained in this chapter are a uniform statement of basic merit system standards issued by the Social Security Administration and the United States Public Health Service and are applicable to the programs, including those under the assistance titles of the Social Security Act, in which the establishment and maintenance of methods relating to personnel standards on a merit basis is a condition of receiving Federal aid.
>
> "Employees who have completed the required probationary period of appointment and acquire permanent status will not be subject to separation except for cause, or for reasons of curtailment of work or lack of funds. In the event of separation, permanent employees will have the right of appeal to an impartial body through an established procedure provided for in the merit system rules." (Emphasis added.) Handbook of Public Assistance, Administration, Part 3, Sections 2,000 through 2,999. Standards for a Merit System of Personnel Administration.

From all of the above, it is obvious that if the State of Alabama is to receive federal funds for welfare work, then the employees of the state and county welfare departments must be within the coverage of the State Merit System and not subject to discharge, except for cause.

Furthermore, it having been shown that it was the intention of the Legislature in passing Act No. 703, supra, to meet whatever conditions necessary to obtain federal funds for welfare work, I can only conclude that in passing this act, the Legislature intended that all county welfare department employees, including the county director of public welfare, be within the coverage of the State Merit System and not subject to discharge without cause.

It follows, of course, that the county director of public welfare is within the coverage of the State Merit System and may be discharged for cause only and not at the pleasure of the county board.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 24, 1954

Hon. George P. Quarles
Judge of Probate
Dallas County
Selma, Alabama

Counties—Dallas County—Courthouses—Libraries.

The county governing body of Dallas County may make an appropriation from its general fund for bookshelves for the law library located in the courthouse.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of September 13, 1954, is as follows:

"By Act No. 308 approved August 5, 1953, which Act appears on Page 366 of Volume I of Acts of Alabama Regular Session 1953, a contingent fund was provided for the Circuit Court of Dallas County, Alabama, part of which Act reads as follows:

" 'Section 1. There is hereby created for Dallas County a Contingent fund which shall be known as the Contingent Fund for the Circuit Court of Dallas County, Alabama. The Clerk of the Circuit Court of Dallas County and the Judges or Clerks of all inferior courts within said County shall pay into the County Treasury of Dallas County, Alabama for the use and benefit of the Contingent Fund for the Circuit Court of Dallas County, Alabama all Solicitors fees collected in the trial cases in Dallas County, Alabama.

" 'Section 2. The Judge of the Circuit Court of Dallas County, residing in said County, and the Circuit Solicitor for said County shall have the authority to adopt rules and regulations for the use of monies accruing to the Contingent Fund for the promotion of law enforcement within said County and to provide for the maintenance of a law library in the Court House of Dallas County.'

"You will note from the above that the fees from this contnigent fund may be used for the maintenance of a law library in the Court House of Dallas County. Will you please answer for me the following question: "Can the Court of County Revenues of Dallas County purchase, for the use of this law library in the Court House, book shelves to be placed in this law library, the purchase to be from funds other than this contingent fund of the Circuit Court?"

By virtue of the provisions of Title 12, Section 12(1), Code of Alabama 1940, as amended by Act No. 344, General Acts 1945, page 560, a county governing body in this State has authority "to direct and control the property of the county as it may deem expedient according to law."

The wording of Act No. 308, General and Local Acts 1953, page 366, when considered with Act No. 344, supra, indicates the legislative intent that the law library shall be in the courthouse of Dallas County in a room provided therefor by the governing body of the county. In providing the room for the library, the county should furnish a suitable room with sufficient equipment, including bookshelves reasonably necessary for the proper care and use of the books. The cost thereof may be paid out of the general funds of the county.—Quarterly Report of Attorney General, Vol. 52, page 110; Vol. 47, page 17; Cf. Vol. 17, page 337.

Act No. 308, supra, does not prohibit the use of the general fund of the county to assist in the maintenance of the law library.

Premises considered, I am of the opinion that the county governing body of Dallas County may make an appropriation from its general fund for bookshelves for the law library located in the courthouse.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 28, 1954

Hon. Glenn F. Manning,
Circuit Solicitor,
Twenty-Third Judicial Circuit,
Huntsville, Alabama.

Sales Tax—Exemptions—Taxation.

Gross proceeds of sales of insecticides for use in noncommercial gardens for home use and for use on livestock are exempt from sales tax.

Opinion by Assistant Attorney General Miller.

Dear Sir:

Your request for an official opinion bearing date of August 19, 1954, is as follows:

"Act Number 585, Acts of Alabama 1950, Special Sessions, page 1019, approved August 30, 1951, provides as follows:

"AN ACT

"Relating to taxation: To exempt insecticides from the State's sales and use taxes.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. The gross proceeds of sales of insecticides for agricultural uses by whomsoever sold shall be exempted from the computation of the amount of the tax levied, assessed or payable under the provisions of the State's sales tax statutes (Chapter 20, Article 10, Title 51, Code of Alabama, 1940, as amended, and the storage, use or other consumption of insecticides is hereby specifically exempted from the use tax levied by Article 11 of Chapter 20, Title 51, Code of Alabama (1940), as amended. The term 'insecticide' means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

"Section 2. All laws or parts of laws which conflict with this Act are repealed.

"Section 3. The provisions of this Act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

"Section 4. This Act shall become effective on June 30, 1953.

"Approved August 30, 1951.

"Time 2:06 P.M.

"Your opinion is requested whether the statute hereinbefore set out exempts the gross proceeds of sales of insecticides for use in non-commercial gardens and truck patches (i. e. for home use), and on farm stock, from the computation of the amount of the tax levied, assessed, or payable under the provisions of the State's sales tax statutes."

As I understand your request, you desire my opinion as to whether the gross proceeds of sales of insecticides to be used in noncommercial gardens in which produce is raised for home consumption and sales of insecticides for use on "farm stock" (livestock) are exempt from the State sales tax. It is my opinion that the proceeds of such sales for these usse are exempt from the State sales tax.

Act No. 585, General and Local Acts 1951, page 1019, which grants this exemption, is fully set out in your inquiry, and it expressly exempts the gross proceeds of the sales of insecticides for "agricultural uses" from the computation of the amount of the tax levied under the provisions of the State's sales tax law (Title 51, Chapter 20, Article 10, Code of Alabama 1940, as amended). It is, therefore, necessary to determine whether the uses of insecticides mentioned in your inquiry are "agricultural uses."

The Supreme Court of Alabama, in **State v. Wertheimer Bag Co., 253** Ala. 124, 43 So. 2d 824, a case which construes another statute which exempts certain products sold for agricultural purposes from the State sales tax, quoted with approval several definitions of "agriculture," and the following excerpts from such definitions are applicable to your inquiry:

"The conclusion thus appears to be sound that if the accepted definition of the term 'agriculture' is to be considered as that intended by

the act, the articles . . . were exempt from taxation. The act gives no definition of the term and we have concluded that there would be no sound basis for discarding the generally accepted definition for another without any governing standard. (Citing cases.)

". . . 'Agriculture, in the broad and commonly accepted sense, may be defined as the science or art of cultivating the soil and its fruits, especially in large areas or fields, and the rearing, feeding, and management of livestock thereon, including every process and step necessary and incident to the completion of products therefrom for consumption or market . . . The term is broader in meaning than "farming;" and while it includes the preparation of soil, the planting of seeds, the raising and harvesting of crops, and all their incidents, it also includes gardening, horticulture, viticulture, dairying, poultry and bee raising, and more recently, "ranching." * * *' " (Emphasis added.)

Act No. 585, supra, does not define the term "agricultural uses;" therefore, this term as used in this exemption statute should be given its generally accepted meaning. The meaning of the word "agriculture" as defined in the above cited case is, in my opinion, ample authority to sustain the position that insecticides used for the purposes mentioned in your inquiry are "agricultural uses" thus exempting the proceeds of sales thereof from the State sales tax.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 30, 1954

Hon. J. O. English
Judge of Probate
Coffee County
Enterprise, Alabama

Licenses — Veterans — Exemptions — Statutes — Words and Phrases.

1. Veterans eligible for exemptions from licenses under Act No. 353, General Acts 1945, page 570, as last amended by Act No. 229, General and Local Acts 1953, page 296, may claim same for a period of six years from the effective date of Act No. 353, supra (July 6, 1945), or for a period of six years from their date of discharge or termination of service, whichever is later.

Opinion by Assistant Attorney General Sanders.

Dear Sir:

Your request for an official opinion, bearing date of September 21, 1954, is as follows:

"Regarding our conversation over long distance this date, we wish to have your opinion as to exemption from business or occupational license taxes for a period of six years for veterans who have served in the armed forces of the United States for a period of ninety days or more and who have an honorable discharge from such service.

"We notice in Regular Session of the Legislature 1953, Acts of Alabama, Volume 1 on page 296, that this Act was passed, No. 353, H. 352, approved July 6, 1945 and then again approved July 24, 1953 at 12:43 P.M.; now, in view of the last approval of said Act, we are in doubt as to whether we should give veteran exemption for a six year period from July 24, 1953, or date of discharge, whichever is later, or if we should go back to when the Act was first approved on July 6, 1945, and calculate his exemption period from that date.

"Since we will begin selling privilege license on October 1, 1954, we shall greatly appreciate your prompt attention to this matter, giving us your opinion as to exemptions referred to, by return mail."

I am of the opinion that the six-year period runs from July 6, 1945, or the date of discharge, whichever is later, and not from July 24, 1953.

The statute to which you refer (Act No. 229, General and Local Acts 1953, page 296, approved July 24, 1953) is an amendment to Act No. 353, General Acts 1945, page 570, approved July 6, 1945, as amended by Act No. 698, General Acts 1947, page 535, approved October 13, 1947. This legislation appears as Title 51, Section 864(1)-(8), 1953 Cumulative Pocket Part, Code of Alabama 1940. Its purpose was to grant an exemption from certain state, county and municipal business or occupational license taxes to veterans who qualify thereunder.

As originally enacted in 1945, the exemption applied to honorably discharged veterans who had served 60 days or more in the armed forces of the United States between September 16, 1940, and the termination of the then existing war by a definitive treaty of peace. This exemption was granted to extend for a period of three years after the effective date of the Act (July 6, 1945), or for a period of three years after the veteran's discharge from or termination of service, whichever might be the later. The maximum amount of the exemption was fixed at $35 for a State license, $35 for a county license, and $35 for a municipal license. Other conditions were also attached regarding the veteran's income and property holdings.

The 1947 Act amended Section 1 of the 1945 Act by changing the necessary period of service to 90 days or more "between September 16, 1940, and the termination of World War II by the signing of a definitive treaty of peace," and increasing the period of the veteran's exemption from three years to a period of six years "after the effective date of this Act or for a

period of six years after his or her discharge from or termination of service, whichever is later." (Emphasis supplied.) (The 1947 Act also amended another section of the 1945 Act, not here relevant.)

The effect of the 1947 Act upon the very point about which you now inquire was interpreted by this office in an opinion reported in Quarterly Report of Attorney General, Vol. 60, page 100. In that opinion it was pointed out that Act No. 698 (the 1947 Act), supra, specifically amended Act No. 353 (the 1945 Act), supra, by rewriting Sections 1 and 6 thereof. In answering the question posed, the opinion stated:

> "Your question actually devolves itself into a determination of the meaning of the term 'effective date of this act,' that is, does such term refer to the effective date of Act 353, supra, or Act 698, supra.
>
> "In my judgment, such term refers to the effective date of Act 353, supra, i.e., July 6, 1945. This, for the reason that Act 698, supra, is purely amendatory in nature and the provisions thereof only serve to amend the terms of Act 353, supra, providing that Act 353, supra, shall now read and provide as prescribed by Act 698, supra. The terms of Act 698, supra, become in fact the terms of Act 353 ,supra. It is, therefore, my opinion that when reference is made to 'the effective date of this Act' said reference is to the effective date of Act 353, supra, July 6, 1945. It, therefore, follows that answer to your first inquiry is in the negative, and that veterans eligible for benefits under the terms of Act 353, supra, as amended by Act 698, supra, may claim same for a period of six years beginning July 6, 1945, or for a period of six years from the date of his or her discharge from or termination of service, whichever is the later."

The 1953 Act (Act No. 229, supra) is again an amendment of the original 1945 Act, as amended, and is in the same form as the 1947 amendment —that is, it merely rewrites Section 1 of the 1945 Act so as to make it apply also to veterans who served at any time subsequent to World War II when the United States was engaged in hostilities with any foreign state. (A new provision was also made for veterans with less than 90 days' service who were discharged or released by reason of a service-connected disability.) The other sections of the original Act, as amended, are not changed or affected by the 1953 amendment.

I am of the opinion that the same reasoning found in the opinion in Vol. 60, page 100, supra, relative to the 1947 amendment, is applicable to the 1953 amendment and that this same opinion, therefore, disposes of your inquiry. That is to say, Act No. 229, supra, does not create a new six-year period for the exemption beginning with July 24, 1953, the date of that Act's approval. Rather, because of the statute's amendatory form, the phrase "after the effective date of this Act" relates back to the effective date of the original Act—July 6, 1945. Since that period had already expired at the time the 1953 Act was enacted, this phrase should be treated as surplusage. (The other period—six years from the date of discharge—

of course, remains in effect for any veteran who becomes discharged and who has had the proper type of service.)

To interpret the 1953 Act otherwise would have the effect of creating a new six-year exemption period, starting on July 24, 1953, and available to many thousands of veterans who were discharged more than six years prior to that time, and who, therefore, had either used up or lost their right to the exemption, whether counting from the original enactment or from the date of discharge, but who could now renew their rights for a six-year period starting in 1953. To attribute to the legislature the intention to thus revive the rights of such person would, in my opinion, require plainer language than that found in Act No. 229, supra. It seems fairly obvious that the legislative scheme was to provide a six-year period for veterans to claim their right to the exemption, starting from the date of the first (1945) Act, in the case of veterans already discharged at the time, and from the date of discharge for veterans discharged later. Neither of the subsequent amendments evinces any intention to change this scheme.

The holding of the opinion in Vol. 60, page 100, supra, was reiterated in Quarterly Report of Attorney General, Vol. 63, page 17. And the same problem of statutory construction was dealt with by the Supreme Court of New Jersey, in the case of **Dwyer v. Volmar Trucking Corp.**, 105 N. J. L. 518, 146 A. 685. In that case, the words "from and after passage of this act" found in an amendatory Act, were held to refer to the effect to be given to the original Act, since the amendment became a constituent part of that Act. The amendatory statute there in question (Laws of New Jersey 1927, p. 441, c. 232) followed the same pattern as our 1947 and 1953 Acts—that is, it merely provided that a certain section of the prior Act was amended "to read as follows," and then the section was set forth in its revised form.

These authorities indicate, therefore that the six-year period runs from the date of the original 1945 Act (July 6, 1945) or the date of discharge, whichever is later, and said period is not renewed or extended so as to run from the date of the 1953 amendatory Act.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 30, 1954

Hon. C. C. McWhorter, Chairman
Lawrence County Board of Revenue
Moulton, Alabama

Road and Bridge Fund—Counties—Voting Machines—Constitution 1901.

Counties may not use a surplus in the Road and Bridge Fund resulting from a tax imposed upon the authority of Constitution of Alabama 1901, Section 215, for the purchase of voting machines.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of September 11, 1954, is as follows:

"Lawrence County has a fund designated as the 'Road and Bridge Fund' which is made up of a two and one-half mill county tax levied under Section 215 of the Constitution, Subsection (a). The Board of Revenue has recently authorized the borrowing of some money against the future revenue from this tax for the purpose of renovating an office building for county use. It appears now that there will be a balance on hand from this loan after the necessary cost of renovation is paid.

"The Board of Revenue is anxious to purchase voting machines for use in the county, but there is not sufficient revenue in the General Fund of the county to make this purchase. Can the balance or surplus mentioned above in the 'Road and Bridge' fund be used for the purpose of purchasing voting machines."

In my opinion, your inquiry must receive a negative answer. Constitution of Alabama 1901, Section 215, authorizes the several counties to levy and collect a tax for specified purposes: ". . . to pay any debt or liability now existing against any county, incurred **for the erection, construction, or maintenance of the necessary public buildings or bridges,** or that may hereafter be created for the erection of **necessary public buildings, bridges, or roads.** . . ." (Emphasis supplied.) Thus, it is clear that a tax could not be levied under Section 215, supra, in order to purchase voting machines.

If a levy of a tax under Section 215, supra, for the purchase of voting machines is not authorized, then a balance or surplus resulting under an authorized levy could not be used for the purchase of such machines. It is clear from the opinions of this office that any surplus resulting from a levy imposed upon the authority of Section 215, supra, must be used for a purpose for which the tax could have originally been levied. In Quarterly Report of Attorney General, Vol. 49, page 104, at 108, it is said that: ". . . any surplus from the proceeds of said special tax (imposed upon the authority of Constitution of Alabama 1901, Section 215) may . . . **be used for** any other purpose for which the tax could have originally been levied, . . ." This, of course, precludes the possibility that the surplus to which you re-

fer in your inquiry may legally be used to purchase voting machines. See: Quarterly Report of Attorney General, Vol. XVIII, page 71.

Therefore, as has been previously noted, your inquiry must be answered in the negative.

Yours very truly,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

September 30, 1954

Hon. J. L. Pickett
Sheriff, Bullock County
Union Springs, Alabama

Prisons and Prisoners—Sheriffs—Wills.

The sheriff shall be paid by the State for feeding a prisoner who has been committed to the county jail under Title 61, Section 37, Code of Alabama 1940, for failure to produce a will which is in the possession of such prisoner .

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of September 13, 1954, is as follows:

"The Probate Judge of this county has committed a person to jail under Tit. 61 Sec. 37, Code of 1940. Please advise how I am to be paid for caring for and feeding this prisoner."

Title 61, Section 37, Code of Alabama 1940, to which you refer in your request, is as follows:

"§ 37. Proceedings to compel production of will; penalty.—On application to the probate court of the proper county by any person interested, duly verified by affidavit, the judge of such court must issue a citation to any person alleged to have the custody or possession of any last will, requiring such person to produce the same before such judge on a certain day, to be specified in such citation; and any person who, after service of such citation upon him, fails to produce such will, or to make an affidavit according to the provisions of the next section, by the day specified in such citation, may be committed to jail until he produces such will, makes such affidavit, or is otherwise discharged by law; and he is also liable to all persons interested for all damages caused by withholding such will."

Persons confined by virtue of this section would be legally committed under Title 45, Section 117(3), Code of Alabama 1940, as "persons committed for contempt or on civil process."

Title 45, Section 144, Code of Alabama 1940, as amended by Act No. 309, General Acts 1945, page 502, which is pertinent to this question, is as follows:

> "Section 144. Allowance for feeding prisoners.—Food for prisoners in the county jails, except as otherwise provided by section 76 of this title, shall be paid for by the state as follows: There shall be allowed such amount as is actually necessary for food for each prisoner daily, but the said amount so allowed cannot exceed sixty cents per capita."

Title 45, Section 76, Code of Alabama 1940, has to do with those prisoners which are sentenced to hard labor for the county and is not pertinent to the question here treated.

It would appear, from a consideration of Section 144, supra, that the cost of feeding any prisoner who was legally committed to the county jail, except those sentenced to hard labor for the county, should be paid by the State.

It is, therefore, my opinion that you, as Sheriff of Bullock County, should be paid by the State, under the provisions of Section 144, supra, for the cost of feeding a prisoner committed under the provisions of Section 37, supra. Cf. Quarterly Report of Attorney General, Vol. 20, page 12.

Very truly yours,

BERNARD F. SYKES
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940)

INDEX

Quarterly Report Of Attorney General
July 1, 1954, Through September 30, 1954
Volume 76

—A—

ACTS (GENERAL AND LOCAL):

GENERAL ACTS 1945:
- Page 502 110
- Page 570 105

LOCAL ACTS 1945:
- Page 47 82

GENERAL ACTS 1947:
- Page 149 43

LOCAL ACTS 1947:
- Page 46 50

GENERAL AND LOCAL ACTS 1951:
- Page 1019 103
- Page 1211 98
- Page 1330 25
- Page 1451 14
- Page 1626 ..... 20, 72, 77

GENERAL AND LOCAL ACTS 1953:
- Page 32 80
- Page 296 105
- Page 366 102
- Page 734 35
- Pages 1029, 1031 39

ADOPTION:
- Disposition of records of first adoption after second 10
- Second record of birth may be prepared upon second adoption 10

AD VALOREM TAXES:
- Goods manufactured in Mississippi stored in Alabama—
  - Subject to 72
- Imports stored in original package are exempt from 72
- Raw materials and manufactured articles—Exempt under certain circumstances 77

ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD—Act:
- Military reservations—Expenses of sales to agencies on—
  - Need not be reported to 43

ALABAMA POLYTECHNIC INSTITUTE:
All agencies of entitled to privileges and exemptions applicable to State 63
Agencies—Books and records of—Subject to examination by State Examiners 63
Auburn Athletic Association—Auburn Society for Public Improvement and Auburn Research Foundation are agencies of 63
Auburn Alumni Association not agency of 63
Board of Trustees—Control vested in 63

—B—

BANKS AND BANKING:
Credit unions—FHA loans—May make certain types 11
Credit unions—FHA and VA guaranteed mortgages legal investments for 90

BIRTH CERTIFICATES:
Disposition of records of first adoption after second adoption 10
Second record of birth may be prepared upon second adoption 10

BUILDINGS:
School—Erected in current year—Capital outlay warrants may be issued to pay for 30

BUDGET ACT:
Capital outlay warrants—May be issued to pay for school buildings erected in same year 30

—C—

CITY BOARDS OF EDUCATION:
Vocational schools for veterans—May be established by 92

CLAIMS:
Coroner's fees—Barred by statute—May be paid 85

CLERKS OF CIRCUIT COURTS:
Ex officio clerk of county court—Morgan County—Not entitled to 5% on collections for State or county 50

CLERKS OF COUNTY COURTS:
Morgan County—Not entitled to 5% on collections for State or county 50

CLERKS OF INFERIOR COURTS:
Executions—Must accept return on direction of plaintiff 45

CODE OF ALABAMA 1940:
Title 11:
Section 22 50
Title 12:
Section 110 85
Section 118 85
Section 198 56
Title 13:
Section 198(16), as amended 50

Title 14:
Section 406 14
Title 17:
Sections 38, 55 82
Section 155 15
Section 162 15
Section 343 32
Title 19:
Section 1 56
Section 13 53
Title 24:
Section 4 10
Title 26:
Section 259 7
Section 298 7
Title 28:
Section 285 90
Section 290 11
Title 30:
Section 97 37
Title 35:
Section 12 88
Section 181 34
Title 37:
Sections 698-732 48
Title 41:
Section 211 38
Title 45:
Section 144, as amended 110
Title 49:
Section 11, as amended 98
Title 51:
Section 2 20
Section 2(m), as amended 72
Section 2(1) (m), as amended 77
Sections 2-16 48
Sections 618, 619, as amended 39
Title 52:
Sections 216, 236, 241, 242 30
Sections 263, 273 55
Section 270 58
Section 385 92
Title 58:
Section 47(f), as amended 25
Title 61:
Section 37 110

COLLEGES AND UNIVERSITIES:
University Trustees may invest funds in veterans' guaranteed mortgages 25

CONDEMNATION:
Hearing by and before commissioners—Either party has right to—No authority to pay witnesses 53
Road materials may be condemned on a per yard basis 56
Road materials must be paid for before taking 56

CONSTITUTION OF ALABAMA 1901:
Section 215 108
Section 266 63

CONSTITUTIONAL AMENDMENTS:
Amendment 82 58

CORONERS:
Fees barred by statute—May be paid 85

CORPORATIONS:
Occupational tax on foreign—Paid into General Fund 35

COSTS AND FEES:
Distinguished from allowance or compensation 50
Execution returned on order of plaintiff before levy or payment 45

COUNTIES:
Bookkeeper for—May not be register 38
Claim for coroner's fee barred by limitations statute—May be paid by 85
Condemned road materials—Must pay for before taking 56
Dallas—General Fund—May purchase bookshelves for law library from 102
Jurors—May not pay for shaves for 37
Lists of voters—No authority for printing for use by general public 82
Military leave pay—Applicable to officers and employees of—Limited to 21 days at any one time 88
Montgomery—May not microphotograph records 22
National Guard—Warehouse for—May contribute to cost of 34
Primary election—Publication of party resolution—No authority to pay for 32
Roads maintained by State—Reopened by when unlawfully closed 80
Road materials—May condemn on per per yard basis 56
Voting machines—Section 215 funds may not be used to purchase 108

COUNTY BOARDS OF EDUCATION:
Capital outlay warrants—May issue to pay for building erected in same year 30
Vocational schools for veterans—May be established by 92

COUNTY DEMOCRATIC EXECUTIVE COMMITTEE:
Resolutions—Publication—Expense to be borne by 32

COURTHOUSES:
Dallas County law library located in—Bookshelves for may be purchased from general fund 102

COURTS:
State—Federal reservation—No jurisdiction over speed violations on 18
CREDIT UNIONS:
FHA loans—May make certain types 11
FHA and VA guaranteed mortgages legal investments for 90

—D—

DALLAS COUNTY:
General Fund—May purchase bookshelves for law library from 102
DEEDS:
Filing tax computation—Contract to convey or bond for title 39

—E—

ELECTIONS:
Lists of voters for publication—No special compensation to prepare 82
Lists of voters—No authority for printing for use by general public 82
Pre-election expense account—Failure to file before primary does not disqualify as write-in candidate nor for office 15
Primary—Publication of party resolution concerning—
To be paid for by party 32
Write-in votes—Rubber stamps may not be used 15
EMINENT DOMAIN:
Road materials may be condemned on a per yard basis 56
Road materials must be paid for before taking 56
EMPLOYMENT, EMPLOYERS AND EMPLOYEES:
Workmen's Compensation—Recovery of benefits—
Effect of foreign residence 7
ESCAMBIA COUNTY:
Lists of voters for publication—No special compensation to prepare 82
Lists of voters—No authority for printing for use by general public 82
EXAMINERS OF ACCOUNTS:
Alabama Polytechnic Institute—All agencies of—
Subject to examination by 63
EXECUTIONS:
Returned on direction of plaintiff—Must be accepted by clerk of inferior court 45
EXEMPTIONS:
Ad valorem taxes—Raw materials and manufactured articles—
Exempt under certain circumstances 77
Ad valorem taxes—Goods manufactured in Mississippi stored in Alabama—Not exempt 72
Ad valorem taxes—Imports stored in original package exempt 72

License—Veteran's 6-year period begins July 6, 1945, or date of discharge whichever is later 105
Sales tax—Insecticides used noncommercially entitled to 103
State and county—Applicable to municipal taxes 48
Television sets not exempt from ad valorem taxes 20

—F—

FILING TAX:
Contract to convey—Bond for title—Manner of computation of 39

FUNDS:
Balance from operation of veterans' training—May be carried over to next fiscal year 92
General—Occupational tax on foreign corporations paid into 35

—H—

HEALTH AND HEALTH DEPARTMENT:
Second record of birth may be prepared upon second adoption 10

HIGHWAYS AND HIGHWAY DEPARTMENT:
County roads maintained by State—Reopened by county when unlawfully closed 80
Speed violations on Federal reservations—State courts without jurisdiction over 18

—J—

JEFFERSON COUNTY:
5-mill school tax levied under Amendment 82 is county tax 58
Over-all tax rate—Computation of—Area brought into corporate limits during tax year 58

JUDGES OF PROBATE:
Lists of voters for publication—No special compensation to prepare 82

JURISDICTION:
State courts—Federal reservation—None over speed violations on 18

JURORS AND JURIES:
County may not pay for shaves of jurors 37

—L—

LAUDERDALE COUNTY:
County roads unlawfully closed—Authorized to reopen 80

LIBRARIES:
Law—Bookshelves for—Dallas County may purchase from general fund 102

LICENSES:
Exemption—Veterans—Six-year period begins July 6, 1945, or date of discharge, whichever is later 105
Occupational tax on foreign corporation—Paid into general fund 35

LIMITATION OF ACTIONS:
Claim for coroner's fees—Barred by statute—May be paid 85

LOANS:
FHA—Credit unions may make certain types 11

—M—

MERIT SYSTEM:
County director of public welfare subject to 98

MILITARY AND NAVAL AFFAIRS:
Leave pay—Applicable to all public officers and employees 88
Leave pay—Limited to 21 days at any one time 88
National Guard—Warehouse for—County may contribute to cost of 34

MILITARY RESERVATIONS:
Expenses of sales of liquor for use on—Need not be reported to ABC Board 43

MONTGOMERY COUNTY:
May not microphotograph records 22

MORGAN COUNTY:
Clerk of county court—Not entitled to 5% on collections for State or county 50

MORTGAGES:
Filing tax computation—Contract to convey or bond for title 39
FHA and VA guaranteed—Legal investments for credit unions 90

MOTOR VEHICLES:
Over-all tax rate—Computation of—Area brought into corporate limits during tax year 58

MUNICIPALITIES:
City of Birmingham taxes payable in advance 58
Military leave pay—Applicable to officers and employees of—Limited to 21 days at any one time 88
National Guard warehouse—Construction on property of—County may contribute to cost of 34
Over-all tax rate—Computation of—Area brought into corporate limits during tax year 58
School tax district—City with board of education constitutes 55
Taxes—State and county exemptions apply 48

—N—

NATIONAL GUARD:
Warehouse for—County may contribute to aid in construction 34

—O—

OFFICERS AND OFFICES:
County welfare director subject to Merit System 98
Military leave pay—Applicable to all public officers and employees—Limited to 21 days at any one time 88

Pre-election expense account—Effect of failure to file on qualification for office 15
Register—May not be bookkeeper for county 38

OPINIONS OVERRULED, MODIFIED OR DISTINGUISHED:
Quarterly Report, Vol. 52, page 117, overruled 39
Quarterly Report, Vol. 70, page 29, modified and extended 14
Quarterly Report, Vol. 72, page 25, modified 25

—P—

POLL TAX AND POLL LISTS:
Lists of voters—No authority for printing for use by general public 82
Lists of voters for publication—No special compensation to prepare 82

PRISONS AND PRISONERS:
Feeding prisoner committed for failure to produce will State should pay for 110

PUBLICATIONS:
Resolution of party concerning primary election—Paid for by party 32

PUBLIC WELFARE, DEPARTMENT OF:
County director subject to Merit System 98

—R—

RADIOS:
Exemption from ad valorem taxes does not include television 20

RECORDS:
Disposition of records of first adoption after second adoption 10
Montgomery County may not microphotograph 22
Second record of birth may be prepared upon second adoption 10

REGISTERS:
May not be bookkeeper for the county 38

RIGHTS OF WAY:
Condemnation—Either party has right to hearing before commissioners—No Authority to pay witnesses 53

ROADS AND BRIDGES:
County roads maintained by State—Reopened by county when unlawfully closed 80

ROAD AND BRIDGE FUND:
Surplus from may not be used to purchase voting machines 108

—S—

SALES TAX:
Exemptions—Insecticides used noncommercially entitled to 103

SCHOOLS:
5-mill school tax levied under Amendment 82 is county tax 58

Funds—Balance from veterans' training—May be carried over to next fiscal year 92
Private or parochial—State Department of Education may enter into contract with under facts stated 70
Private or parochial—State Department of Education may send representatives into for stated purpose 70
Tax district—City having board of education designated as 55
Vocational—Established by city and county boards of education for veterans 92

SHERIFFS:
Feeding prisoner committed for failure to produce will—State should pay for 110
Pre-election expense account—Failure to file before primary does not disqualify for office 15

SOLICITORS:
Witnesses—Failure to respond to subpoena to appear before—Punishable by fine 14

STATE AND STATE DEPARTMENTS:
Military leave pay—Applicable to officers and employees of—Limited to 21 days at any one time 88

STATE DEPARTMENT OF EDUCATION:
Private or parochial schools—May enter into contract with 70
Private or parochial schools—May send representatives into for stated purpose 70

STATUTES:
Act No. 229, General and Local Acts 1953, page 296, amending former Act—"Effective date of this Act" construed 105

SUBPOENAS:
To appear before solicitor—Failure of witness to respond punishable by fine 14

—T—

TAX ASSESSORS:
Assessing municipal taxes—State and county exemptions apply 48

TAXATION:
Ad valorem—Raw materials and manufactured articles—Exempt under certain circumstances 77
Ad valorem—Imports stored in original package are exempt from 72
Ad valorem—Goods manufactured in Mississippi stored in Alabama—Subject to 72
5-mill school tax levied under Amendment 82 is a county tax 58
City of Birmingham taxes payable in advance 58
Exemptions applicable to State—All agencies of Alabama Polytechnic Institute entitled to 63
Municipal taxes—State and county exemptions apply 48
Occupational tax on foreign corporations—Paid into general fund 35
Over-all tax rate—Computation of—Area brought into corporate limits during tax year 58

Sales tax exemption—Insecticides used noncommercially entitled to ... 103
School tax district—City having board of education designated as ... 55
Television set not exempt from ad valorem taxes ... 20
TELEVISION:
Receivers not exempt from ad valorem taxes ... 20
TRUSTS AND TRUSTEES:
University Trustees may invest funds in veterans guaranteed mortgages ... 25

—U—

UNITED STATES:
Military reservations—Expenses of sales of liquor for use on—Need not be reported to ABC Board ... 43
Speed violations on Federal reservations—State courts without jurisdiction over ... 18
UNIVERSITY OF ALABAMA:
Trustees may invest funds in veterans guaranteed mortgages ... 25

—V—

VETERANS:
License exemption—Six-year period begins July 6, 1945, or date of discharge, whichever is later ... 105
Vocational schools may be established by county or city boards of education ... 92
VOTERS:
Write-in votes—Rubber stamp may not be used ... 15
VOTING MACHINES:
Section 215 funds may not be used to purchase ... 108

—W—

WARRANTS:
Capital outlay—May be issued to pay for school buildings erected in current year ... 30
WILLS:
Prisoner committed for failure to produce—State should pay for feeding ... 110
WITNESSES:
Condemnation hearing before commissioners—No authority to pay ... 53
Failure to respond to subpoena to appear before solicitor punishable by fine ... 14
WORDS AND PHRASES:
"Costs and fees" distinguishable from "allowance" or "compensation" ... 50
"Effective date of this Act" ... 105
"Radio" does not include "television" ... 20
WORKMEN'S COMPESATION:
Recovery of benefits—Effect of foreign residence ... 7